

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

VERIZON FLORIDA LLC,

Complainant,

v.

FLORIDA POWER AND LIGHT  
COMPANY,

Respondent.

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File No.: EB-14-MD-003

DECLARATIONS AND EXHIBITS

A. Declaration of Thomas J. Kennedy (June 29, 2015).

Ex. 1 - 2014 Declaration of Thomas J. Kennedy (April 4, 2014), submitted in  
Docket No. 14-216, File No. EB-14-MD-003

Ex. 2 – Linear Facilities Pole Attachment Agreement Template

Ex. 3 – Right-of-Way Agreement

Ex. 4 – Verizon Payment Pole Attachment Overview

B. Declaration of Roger A. Spain, CPA, CFA, ABV, CVA (June 29, 2015).

Ex. 1 – Roger A. Spain *Curriculum Vitae*

Ex. 2 – Roger A. Spain History of Testimony

C. Verizon Florida LLC's Responses to Florida Power and Light Company's Requests  
for Production of Documents.

D. Letter from Charles Zdebski to Chris Huther dated June 17, 2015.

E. Letter from Chris Huther to Charles Zdebski dated June 19, 2015.

F. Letter from Kathleen Grillo, Senior Vice President Federal Regulatory Affairs,  
Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission  
dated March 16, 2011.

- G. 2014 Declaration of Roger A. Spain, CPA, CFA, ABV, CVA (April 4, 2014), submitted in Docket No. 14-216, File No. EB-14-MD-003.**
- H. Email from Charles A. Zdebski to Lia Royale dated February 24, 2015.**
- I. Email from Lia Royale to Charles A. Zdebski dated February 26, 2015.**
- J. Verizon Florida LLC's Responses to Florida Power and Light Company's Interrogatories.**

# **EXHIBIT A**

**Before the  
Federal Communications Commission  
Washington, DC 20554**

VERIZON FLORIDA LLC,	)	
	)	
Complainant,	)	Docket No. 15-73
	)	File No. EB-15-MD-002
v.	)	
	)	
FLORIDA POWER AND LIGHT	)	Related to
COMPANY,	)	Docket No. 14-216
	)	File No. EB-14-MD-003
Respondent.	)	
	)	

**DECLARATION OF THOMAS J. KENNEDY  
ON BEHALF OF DEFENDANT  
FLORIDA POWER AND LIGHT COMPANY**

I, THOMAS J. KENNEDY, having personal knowledge of the facts contained herein,  
state as follows:

1. My name is Thomas J. Kennedy, and my business address is Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.
2. I am over the age of eighteen (18) years old and am otherwise competent to testify.
3. I am employed by Florida Power & Light Company ("FPL" or the "Company"). I am currently employed as Principal Regulatory Analyst in the Power Delivery business unit and have held that position since July 2012.
4. I am a Professional Engineer responsible for managing Joint Use. Since 1994, I have been responsible for negotiating all new distribution pole attachment agreements for FPL, assisting in the establishment of pole attachment policies and processes for field personnel, providing and interpreting language in pole attachment agreements, resolving



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field disputes, assisting with the oversight of pole attachment rate calculations, tracking and billing incumbent local exchange carriers ("ILECs"), competitive local exchange carriers ("CLECs") and other telecommunication carrier attachments, ensuring compliance with pole attachment related Sarbanes Oxley requirements, compliance with Federal Communication Commission ("FCC") and Florida Public Service Commission ("FPSC") pole attachment regulatory requirements, compliance with pole attachment legal and contractual requirements, budgeting and forecasting of pole attachment revenues and expenses, and ensuring that pole attachment related financial transactions are properly accounted for in all respects.

5. I graduated from the University of Florida in 1983 with a Bachelor of Science in Mechanical Engineering. I have been employed by FPL since 1985. Prior to my current role at FPL, I held positions at FPL including distribution planner, transmission and distribution crew supervisor and distribution design engineer. Prior to my employment at FPL, I worked for the United States Veterans Administration Office of Construction as a Resident Engineer. I am a Professional Engineer licensed in the State of Florida.
6. The purpose of my declaration is to identify, explain and in certain instances value the benefits received by Verizon and the costs incurred by FPL under the joint use agreement between the parties, both at the time of attachment and continuing after termination of the agreement. I am providing this declaration in connection with FPL's response to the complaint filed by Verizon on March 13, 2015 against FPL before the FCC in Docket No. 15-73 ("Complaint").
7. By this reference, I hereby incorporate into this declaration the declaration I provided in FCC Docket No. 14-216, dated April 4, 2014 ("2014 Kennedy Declaration"). The 2014

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Kennedy Declaration is attached hereto as Exhibit 1. The 2014 Kennedy Declaration explains the nature of the joint use of facilities ("joint use") relationship between FPL and Verizon and provides facts relevant to FPL's response to the Complaint.

**I. SUMMARY OF KEY POINTS FROM 2014 KENNEDY DECLARATION**

8. In the 2014 Kennedy Declaration, I explained: (i) the history of the parties' joint use relationship and the nature of the joint use agreements between the parties; (ii) benefits to Verizon and costs borne by FPL under the joint use agreement; and (iii) rates, negotiations, invoicing and payments. The joint use relationship between the parties and their predecessors dates back to the early 20th century. This relationship currently involves approximately 74,000 shared poles. Importantly, Verizon owns only about 7,000 poles and FPL owns about 67,000 and this ownership ratio has been essentially the same since the very start of the parties' relationship. FPL therefore incurs and Verizon avoids the overwhelming majority of costs discussed regarding each aspect of pole ownership below. In addition, the relationship is distinguishable from a "space rental" agreement or typical "pole attachment agreement," such as those between pole owners and cable companies or CLECs, based upon a number of factors. Significantly, the joint use agreement between FPL and Verizon required the pole owner to build and maintain a pole that is taller and stronger than the pole owner needs to serve the owner's customers in order to accommodate attachments by the other party to the agreement. But for the joint use relationship, FPL would have been able to build shorter and less robust poles. Additionally, such poles would have had no space on them for third party pole attachments in the so-called communications space. As discussed herein and in the 2014 Kennedy Declaration, the joint use agreement provided and still provides, through the so-called "evergreen" provision, a number of other benefits to Verizon.

**II. SPECIFIC BENEFITS RECEIVED BY VERIZON UNDER THE JOINT USE AGREEMENT**

**A. Verizon Paid No Permitting Fees**

9. Under the joint use agreement, and unlike cable companies and CLECs, Verizon was not required to file a permit application, pay an initial fee, or wait for approval from FPL before attaching. Permit fees for attachments to poles that have already been made ready to accommodate communication space under the joint use agreement (for Verizon) are today \$20.95 per pole per attachment. However, in the absence of the joint use agreement with Verizon, the poles would not have been tall enough to accommodate a communication carrier attachment and all permits would have been make-ready permits; that is, requests to change out the pole with one that would accommodate a communications attachment. It is essential to note, that it is not technically possible to rearrange the electric facilities on a pole designed and installed to serve only FPL's customers in order to accommodate the 100 inches of additional space that Verizon's predecessor negotiated into the joint use agreement; therefore a pole change-out would have been required. Absent the joint use agreement, Verizon would have paid a make-ready permit application fee of \$135.95 (in today's costs) in addition to the costs of make-ready work for every single pole Verizon attached to over the course of the parties' relationship. For approximately 67,000 poles, Verizon would have paid over Nine Million Dollars in make-ready permit fees alone.

**B. FPL Invested in Taller Poles to Accommodate Verizon and Verizon Avoided Make Ready Costs as a Result**

10. Under the joint use agreement, and unlike its relationship with cable and telecommunications companies, FPL installed poles 100 inches taller than required by FPL's own needs in order to accommodate Verizon's attachments without performing

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make-ready work. FPL would not have done so in the absence of the joint use agreement as it would have been unnecessary and inappropriate. Accommodations made for Verizon are documented in FPL's Service Planning Operations Manual and design standards that are on file with the FPSC.

11. As a result of FPL's installation of taller poles pursuant to the joint use agreement, Verizon has never been required to perform make-ready engineering work except for the limited instances of overlash or additional attachments. FPL estimates current engineering overheads costs to range from \$100-\$150 per installed pole. This is strictly for the structural engineering of the pole. Verizon has avoided these engineering costs under the joint use agreement because FPL performs this work at FPL's own expense. Verizon has therefore avoided such costs for 67,000 poles in an amount between Six Million Seven Hundred Thousand Dollars and Ten Million Fifty Thousand Dollars.
12. In the absence of the joint use agreement and in the event Verizon sought permission to attach before FPL installed the pole (such as in the case of FPL's installation of a new pole line, for example), at the very least, Verizon would have been charged the incremental cost of accommodating Verizon's attachments, i.e. the electric customers would not be subsidizing Verizon (as the FCC recognizes when determining the contribution by Verizon's competitors in the same situation). The incremental cost to install a pole 100 inches taller than required by FPL is \$294.71<sup>1</sup> on a feeder pole and \$125.87<sup>2</sup> on a lateral pole, not including overhead or administrative and general ("A&G") costs. However, under a pole cost sharing agreement, FPL and Verizon may have negotiated a 50% pole ownership cost split, which today would run Verizon

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<sup>1</sup> [REDACTED]

<sup>2</sup> [REDACTED]



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approximately \$300 to \$500 (excluding A&G) per pole, if Verizon sought to attach after the poles were already installed as they would if they were truly on the same playing field as their competitors. The incremental cost for installing 67,000 poles taller than needed for FPL's purposes therefore ranges from a low of Eight Million Four Hundred Thousand Dollars to a high of Thirty Three Million Five Hundred Thousand Dollars.

13. Verizon enjoys significant savings because of the taller poles FPL installed initially for Verizon pursuant to the joint use agreement. Absent these taller poles, Verizon would pay substantial make ready costs when seeking to attach to existing shorter poles that would have to be replaced. Verizon has avoided paying for make ready on 67,000 poles under the joint use agreement. In my experience, a typical FPL make-ready charge to a third party applicant for the replacement of an FPL distribution pole with a taller stronger distribution pole is approximately \$4,390 in today's dollars.<sup>3</sup> If Verizon had been required, as are cable companies and CLECs, to pay make-ready costs to replace shorter FPL poles built solely to serve FPL's electric customers with taller poles, Verizon would have paid Two Hundred Ninety Four Million Dollars in make-ready fees assuming typical make-ready costs per pole. Verizon avoided these costs but, going forward, it is now passing on the financial burden to its competitors by leaving the joint use agreement.<sup>4</sup> In other words, if FPL does not need to install poles taller than it would need

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<sup>3</sup> These charges, which are referred to as contributions in aid of construction (CIAC"), are required from third parties prior to FPL initiating construction to upgrade/modify its electric facilities to accommodate their attachments. CIAC is required by Florida Administrative Code rules and FPSC-approved FPL tariffs so that the entity causing the cost to modify the facilities, in this case for non-electric service purposes, pays for the requested construction work. This ensures that these costs are not passed on to FPL's general body of electric service customers.

<sup>4</sup> During negotiation Verizon stated they are placing all new facilities underground. Even though their pole attachments were increasing over the last five years, Verizon Florida has established a construction standard of placing all new and (if possible) relocated facilities underground and has expressed no interest in either attaching to an FPL pole or entering into a pole attachment agreement with FPL for new attachments under the same terms and conditions as Verizon's competitors.

for its own use to accommodate Verizon, then the rational financial and regulatory choice will be for FPL to install shorter poles that accommodate only FPL and not any third party attacher. In fact, and unless a cost differential arrangement is made in advance with another carrier, FPL will not install poles taller or stronger than needed for its own purposes at such time when it no longer has a contractual or legal obligation to install poles any taller than needed for its own purposes.

**C. Inspection Fees and Engineering Costs Avoided**

14. Under the joint use agreement, and unlike attachments made by cable companies and CLECs, Verizon's attachments were not subject to FPL inspection at the time of installation, and Verizon was not required to pay an inspection fee. The inspection fee of \$13 per pole is included in the permit costs that would apply in the absence of the joint use agreement.<sup>5</sup> Under the joint use agreement, Verizon saved these costs, which in themselves would total over Eight Hundred Thousand Dollars for 67,000 poles.<sup>6</sup>

**D. Verizon is Granted the Lowest Four Feet of Usable Space on the Pole**

15. The joint use agreement granted Verizon access to the lowest four feet of usable space on each pole, which is easier to access. This is not done for cable companies and CLECs. This reduces Verizon's installation and maintenance costs. On poles without FPL attachments, Verizon still chooses to be the lowest attacher on the pole, demonstrating that Verizon values this position. Verizon did not provide any information on its bucket truck fleet or that of its contractors, so FPL must base its cost estimate on retail costs of similar vehicles. The retail cost to acquire the vehicles is approximately as follows:

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<sup>5</sup> See ¶ 9.

<sup>6</sup> See ¶ 10.

55 ft. bucket truck	\$280K
42 ft. bucket truck	\$225K
F550 bucket truck	\$140K

Verizon could have chosen to negotiate less space requirement to use smaller poles under the joint use agreement, place their facilities at the top of the shorter pole and maintain their equipment with costlier qualified employees to work at the top of the pole, which would have allowed Verizon to negotiate a commensurately lower joint use rate. Verizon chose not to do so.

**E. FPL Replaces Poles To Accommodate Verizon in Circumstances FPL would not Be Required To Do so Absent the Joint Use Agreement and Verizon Avoids the Cost of Installing its Own Poles as a Result**

16. Verizon admits in discovery that it still uses copper cable on FPL poles. Verizon's copper cable attachments require more space than its competitors' attachments due to sag. This additional space is provided to Verizon because the joint use agreement requires FPL to provide Verizon four feet of space on joint use poles at no additional charge.

17. The joint use agreement requires FPL to expand capacity of existing joint use poles to accommodate Verizon's additional space requirements. FPL is not required to expand capacity to accommodate Verizon's competitors. FPL therefore does not expand capacity to accommodate other attachers in all circumstances, but only expands capacity in certain circumstances and in its own sound discretion. FPL has a legal right not to expand capacity absent the joint use agreement. Waiving this right under the joint use agreement provides Verizon with significant value that is not available to its competitors.

18. FPL was obligated to change out a pole for Verizon under the joint use agreement, but FPL has no such obligation in relation to Verizon's competitors. In the absence of the

joint use agreement and in the event FPL elected not to change out a pole to accommodate Verizon, then Verizon would have borne the full cost of installing and maintaining its own pole. FPL estimates the bare cost of installing a pole today to be [REDACTED] on a feeder pole and [REDACTED] on a lateral pole, not including A&G costs, and which also does not include the transaction costs of acquiring the necessary right-of-way and annual operations and maintenance costs for the pole.

**F. Verizon Benefits from Coordination with FPL and Enjoys Savings Associated with Pole Line Relocations Mandated by the Florida Department of Transportation and Hardening Mandated by the Florida Public Service Commission**

19. The joint use agreement reduces Verizon's costs in relation to pole relocations and replacements. In Verizon/FPL shared territory, FPL relocates between 50 and 500 FPL poles per year. FPL receives input from Verizon regarding replacement poles, which helps Verizon reduce its transfer costs, but no contribution. FPL's coordination with Verizon saves Verizon time and resources.
20. In addition, when addressing relocations and replacements, Verizon has direct access to FPL engineers, unlike cable companies and CLECs. Verizon can directly request pole plant design modifications from FPL engineers at no additional cost to Verizon (the costs are borne by FPL). Verizon's competitors must work with FPL's contractor at rates of \$45 to \$65 per hour and pay fees ranging from \$7.95 to \$13 per pole.
21. Finally, all pole replacement and relocation coordination of the pole with the Florida Department of Transportation ("FDOT") and governmental entities in Florida is handled by the pole owner. FPL owns the majority of joint use poles and therefore pays for the majority of these relocation costs. Attachers, including Verizon when it is on FPL poles, just follow along. By owning fewer poles, Verizon has avoided costs in relation to these



relocations and hardening. These avoided costs can be substantial, particularly in relation to relocations mandated by the FDOT and distribution plant “hardening”<sup>7</sup> mandated by the FPSC.

22. The relocation of just one pole costs between \$500 and \$1,000. FPL’s obligations under the joint use agreement save Verizon not only the time and resources described above, but also a bottom line portion of the expenses, which totals between \$12,500 and \$250,000 annually (or \$25,000-\$500,000 if Verizon owned the poles itself). Verizon avoids these costs even though the joint use agreement mandates “equitable sharing and the costs and economics of joint use”.

**G. Verizon Avoids Costs of Bonding Suited for it Attachments**

23. Bonding is a technique where conductive equipment, not being used to transport electricity, is commonly connected by conductor/wire to each other and a ground rod, i.e. a person standing on the ground could touch any bonded piece of equipment and be at the same voltage potential without risk of shock. It is required of all pole attachers, but it is not required at every pole location. FPL incurs bonding costs, and Verizon avoids these costs, under the joint use agreement such that FPL incurs bonding costs that it would not otherwise bear. Unlike Mr. Lantz states in his affidavit, FPL does not bond at every pole location to meet its own electric distribution system requirements. Mr. Lantz does a majority of his work outside of FPL/Verizon shared territory. He might therefore be referring to another electric utility in an area where he does most of his work. FPL does, however, bond at every pole location where Verizon needs to do so. When the pole line is built, the joint use agreement requires the pole owner to place bonds where FPL and

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<sup>7</sup> FPL is required to “harden” its infrastructure. By Florida Administrative Code Rule 25-6.0342, Florida adopted the extreme wind loading standards specified by Figure 250.2(d) of the 2007 NESC for most conditions where a new pole is set in place and where needed to support existing critical infrastructure.

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Verizon need them. This pole bonding costs approximately \$200 per pole (including the cost to roll a truck and A&G). Verizon avoids this expense because FPL sets a majority of poles and Verizon does not have to install its own bonds. I would estimate that there are bonds on one-fourth of the joint use poles Verizon and FPL share. Using that estimate, for 67,000 poles,, Verizon's bonding costs in today's dollars would be  $\$200 \times 67,000 \times \frac{1}{4} = \$3,350,000$ . In contrast, if a third-party requires a pole bond on a pole that does not have one, FPL charges the full cost to install one for that third-party. and second Verizon competitors don't get this advantage.

**I. Verizon Avoids Unauthorized Attachment Fees**

24. Verizon avoids paying FPL for unreported attachments until these are identified in a pole survey. Verizon does not pay an unauthorized attachment fee for these unreported attachments. Verizon has placed significant numbers of unreported attachments, as identified by FPL's surveys in 2007 and 2011.
25. The joint use agreement specifies the methodology by which FPL may recover fees for unreported attachments made between surveys. The methodology specifies that the unreported attachments shall be deemed to have been made equally over the years elapsed since the preceding inventory. In advance of the 2007 survey, Verizon reported 3,285 additional attachments. However, the survey showed an increase of 7,282 attachments. Similarly, while in 2011 Verizon reported a decrease of 603 attachments, the 2011 survey revealed that Verizon actually made 1,001 additional attachments. Using the joint use methodology and keeping in mind the FCC's rulings on unauthorized attachment fees, Verizon is required to pay FPL only half as much as its competitors must pay for unreported attachments.

**H. Verizon Avoids Insurance and Indemnification Obligations**

26. The joint use agreement allows Verizon to avoid insurance costs and contingent liabilities, unlike cable companies and CLECs. Unlike competitive LECs, Verizon is not required to purchase its own insurance, list FPL as an additional insured, or indemnify FPL. To the extent Verizon chooses to purchase its own insurance, it does so on its own initiative and not as a prerequisite to attaching to FPL's poles. Verizon avoids exposure to contingent liabilities by not indemnifying FPL. Attached as Exhibit 2 is a copy of FPL's current standard form Linear Facilities Pole Attachment Agreement.

**I. FPL Obtains Rights of Way that Benefit Verizon in Many Cases**

27. FPL, as the pole owner is obligated to make an effort to ensure Verizon has the legal right to place attachments under the joint use agreement, unlike pole attachment agreements for cable companies and CLECs, FPL incurs time and expense in doing so. In many cases, FPL acquires easements that accommodate Verizon at FPL's own expense. Verizon does not pay the incremental cost of obtaining these valuable property rights. Under the joint use agreement, Verizon avoided the cost of performing title searches, negotiating with landowners and making payments to obtain rights of way. FPL does not provide these services to Verizon's competitors. One of FPL's typical title search vendors estimated that title searches alone for 67,000 poles and related parcels would be \$500 per parcel in today's costs. The easement Verizon documents in its complaint does not provide easement rights to CATV companies (or at least did not provide access to them when they attached a CATV line). CATV companies make up the overwhelming majority of the attachers who compete with Verizon on the same FPL poles to which Verizon is attached. Verizon is also incorrect as to the easements FPL typically obtains with regard to its pole lines and as they affect other third party communications

companies. First, depending on the particular circumstances, some easements allow for commercial telecommunications rights and some do not. In addition, FPL's standard pole attachment agreements requires each pole attacher to determine on a pole-by-pole basis whether it has the necessary easement rights to attach or must obtain them from the individual landowner. Attached as Exhibit 3 are illustrative examples of easements for use of property in shared FPL-Verizon service territory. They allow for access for electric lines and "telephone and telegraph lines," but not for cable lines. Although they predate the current joint use agreement, they are the very sort of easements contemplated by the joint use agreement and in fact obtained by FPL to benefit Verizon for many decades under prior joint use agreements preceding the current agreement.

**J. Verizon has the Right to Take Ownership of Poles Abandoned by FPL**

28. The joint use agreement provides Verizon the right to take ownership of pole abandoned by FPL, unlike the typical pole attachment agreements for cable companies and CLECs. The license agreements cited by Verizon as allowing this same right are exceptional and charge a rate higher than the telecom rate.

**K. Verizon has Avoided the Costs of Operations & Maintenance ("O&M") and Administrative & General ("A&G") Expenses Associated with FPL-Owned Joint Use Poles, Along with Other Significant Costs of Pole Ownership**

29. As the pole owner, FPL pays the cost of O&M and A&G expenses, taxes and other significant costs associated with FPL-owned poles. Verizon has avoided all such expenses associated with FPL-owned joint use poles through the parties' joint use relationship and FPL-owned poles make up the vast majority of the parties' joint use poles. As a result, Verizon has avoided direct outlays for O&M and A&G and other expenses associated with these poles. Additionally, the rate charged under the parties' joint use agreement does not include costs associated with FPL's O&M and A&G



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expenses, taxes and other expenses. Therefore, under the joint use agreement, Verizon avoids these costs altogether.

30. In contrast, Verizon's competitors are assessed a portion of FPL's O&M and A&G expenses through FPL's application of the FCC's pole attachment rate formula. FPL's O&M and A&G expenses are included in the "annual carrying charges attributable to the cost of owning a pole." 47 C.F.R. § 1.1404(g)(1)(ix). The annual carrying charge rate also includes depreciation, rate of return, and taxes. *See id.* The annual carrying charge rate is a factor in the FCC pole attachment rate formula. *See* 47 C.F.R. § 1.1409(e).
31. These O&M and A&G expenses include items such as pole inspection and remediation expenses, tree trimming expenses, storm restoration expenses, salaries, employee benefits and casualty losses due to personal injuries and property damages, among many other things. Verizon avoids these costs, which their competitors in contrast are contributing to cover.
32. Utilizing FPL's actual 2014 costs and the FCC's pole attachment formula to determine the net investment per distribution pole (\$586) and O&M (4.61%) and A&G (1.27%) carrying charge rates, annual O&M and A&G expenses per pole exceed \$34 per pole. Assuming "equitable sharing and the costs and economics of joint use" under the joint use agreement, Verizon should also be responsible for half of these expenses or \$17 per pole. Utilizing these results, Verizon is avoiding over \$1,100,000 of O&M and A&G expenses annually.

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NET INVESTMENT PER POLE:	2014 FPL Costs
Account 364 - Poles Towers & Fixtures	\$802,418,106
Less: Crossarms @ 15%	\$120,362,716
Net Distribution Pole Investment	\$682,055,390
Number of Distribution Poles	1,163,099
Net Investment Per Distribution Pole	\$586.41

Carrying Charge Rates	
A & G Expenses	1.27%
O & M Expenses	4.61%
Net Investment Per Distribution Pole	\$586.41
Costs Per Pole of A&G and O&M	\$34.48

**L. Verizon Fabricates the Average Height of an FPL Pole Without Verizon or Third Party Attachments**

33. In an attempt to persuade the FCC that the Joint Use Agreement is not the reason joint use poles are built 100” taller and stronger than needed, Verizon employs expert witness Timothy J. Tardiff to provide<sup>8</sup> the FCC what he claims is factual data from the Verizon/FPL joint survey. Among the items he presents to the FCC is the average height of poles on which there are no attachers. This is purely fabricated. As Verizon states in response to request for production 25 for all documents used to calculate the average height of FPL poles without attachments, “Verizon is not aware of documents that are responsive to this Request.” Additionally, FPL does not have any information that indicates an average height of 41 feet and the truth of the matter is there is no such data. To the extent any FPL poles without Verizon attached are taller and stronger, those poles were either installed that way with CIAC from the attacher or the poles were installed for

<sup>8</sup> Affidavit of Timothy J. Tardiff, Ph.D. III B Paragraph 22.

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Verizon at Verizon's request and they have either not yet attached, reserved space for future attachment or removed their attachments.<sup>9</sup>

**M. Summary**

34. I have calculated the approximate amount paid by Verizon to FPL in joint use fees since 1975. For that calculation, I have used conservative estimates, including that Verizon started with approximately 58,000 attachments to FPL poles in 1975 which progressed to approximately 67,000 today, the approximate annual per pole charge and the approximate total annual invoice, and I have used actual figures where available and also included to be thorough revenue generated from attachments to transmission poles. I calculate the total paid by Verizon to be less than \$50 million. The total value of the benefits provided to and costs avoided by Verizon since 1975 dwarfs the amount it has paid. A copy of my calculation worksheet is attached as Exhibit 4. The terms of the joint use agreement obligate the parties to "contemplate that the use or reservation of space on poles by each party, as Licensee of the other under this agreement, shall be based on the equitable sharing and the costs and economics of joint use"<sup>10</sup> not simply that the parties pay each other only for the bare actual amount of space used. This obligates Verizon to pay an equitable share for the pole as long as they remain attached or for the life of the pole. Once the parties' rights and obligations under their joint use relationship end, Verizon has two options: (1) remove its attachments from the pole and not attach to any new poles, or (2) pay FPL up front for the fully allocated incremental cost of installing a pole with the extra height and strength to accommodate Verizon in accordance with FPL's Contribution in Aid of Construction policy.

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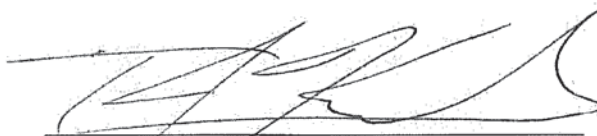
<sup>9</sup> As Verizon has moved to underground their facilities, they are also in the process of removing their existing overhead facilities and placing those underground.

<sup>10</sup> Section 10.1 Joint Use Agreement.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2015.



Thomas J. Kennedy



**Exhibit 1**

**Declaration of Thomas J. Kennedy filed in FCC Docket No. 14-216 and dated April 4, 2014**

# Exhibit 1

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

VERIZON FLORIDA LLC,

Complainant,

v.

FLORIDA POWER AND LIGHT  
COMPANY,

Respondent.

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File No.: EB-14-MD-003

**DECLARATION OF THOMAS J. KENNEDY  
ON BEHALF OF DEFENDANT  
FLORIDA POWER AND LIGHT COMPANY**

I, THOMAS J. KENNEDY, having personal knowledge of the facts contained herein,  
state as follows:

1. My name is Thomas J. Kennedy, and my business address is Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.
2. I am over the age of eighteen (18) years old and am otherwise competent to testify.
3. I am employed by Florida Power & Light Company ("FPL" or the "Company"). I am currently employed as Principal Regulatory Analyst in the Power Delivery business unit and have held that position since July 2012.
4. I am FPL's Professional Engineer responsible for managing Joint Use. Since 1994, I have been responsible for negotiating all new pole attachment agreements for Distribution, assisting in the establishment of pole attachment policies and processes for field personnel, providing agreement language interpretation and resolving field disputes, assisting with the oversight of pole attachment rate calculations, tracking and billing incumbent local exchange carriers ("ILECs") and telecommunication carrier attachments, ensuring compliance with pole attachment related Sarbanes Oxley requirements, complying with Federal Communication Commission ("FCC") and Florida Public Service Commission ("FPSC") regulatory requirements, legal and contractual requirements, budgeting and forecasting of pole attachment revenues and expenses, and ensuring that pole attachment related financial transactions are properly accounted.

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5. I graduated from the University of Florida in 1983 with a Bachelor of Science in Mechanical Engineering. I have been employed by FPL since 1985. Prior to my current role at FPL, I held positions at FPL including distribution planner, transmission and distribution crew supervisor and distribution design engineer. I am a Professional Engineer licensed in the State of Florida.
6. The purpose of my declaration is to explain the nature of the joint use of facilities ("joint use" relationship between FPL and Verizon and to provide facts relevant to FPL's response to the Complaint filed by Verizon against FPL before the Federal Communications Commission ("FCC").

**I. HISTORY OF THE PARTIES' JOINT USE RELATIONSHIP**

7. Verizon's pole attachment relationship with FPL goes back into the early to mid-20th century. At the time Peninsular Telephone Company (which bought out the interest of the Bell Telephone Company in 1905), the forerunner to General Telephone Company of Florida ("GTE") which preceded Verizon, did not have a formal pole attachment agreement with FPL. By 1928, about the time FPL came into existence, Peninsular already held the franchise for the ILEC service territory that Verizon currently shares with FPL. Over time, the companies entered into informal agreements that allowed one company to attach to the other company's poles in exchange for future reciprocity. By 1959, FPL recognized a disparity in pole ownership where the two companies were sharing poles without compensation. FPL and GTE began meeting in December of 1959 to address this disparity and establish an agreement to compensate the majority pole owner. *See Exhibit A, 1959 Minutes*. In the course of their meeting, GTE offered to pay a higher pole rental rate so that it would not be obligated to own and maintain an equal number of poles. Conversely, FPL insisted that GTE own at least half of the joint use poles and offered to sell existing poles to GTE.
8. In July 1960, FPL requested that a formal agreement be in place before continuing the joint use relationship going forward. By early 1961, the parties executed a mutually agreeable joint use agreement. Billing under the agreement was retroactive to January 1, 1960. *See Exhibit B, 1961 Joint Use Agreement*. That joint use agreement expressed "desire" by both the electric company and the telephone company to execute an agreement in accordance with the "Principals and Practices for the Joint Use of Wood Poles by Supply and Communications Companies," which is contained in the 1945 document "Reports of Joint General Committee of Edison Electric Institute and Bell Telephone System on Physical Relations Between Electrical Supply and Communication Systems." *See Exhibit C, EEI-Bell Report*. American Telephone and Telegraph Company ("AT&T") had three members on the committee who published this document. Bell Atlantic and NYNEX, which were two of the seven "Baby Bells" of AT&T, are the primary backbone of what is Verizon today. Therefore, Verizon's predecessors effectively assisted and co-authored the terms of the joint use agreement that GTE signed in 1961. The EEI-Bell Report states, "In cases where it is not clear as to what constitutes an equitable apportionment a fifty-fifty division of the costs may be found the most practicable solution." *Id.* at 35.



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9. In 1960, GTE owned 1,571 joint use poles (7.8%) with FPL attached and FPL owned 18,466 joint use poles with GTE attached. The last verified survey occurred in 2011. That survey found that Verizon owned 7,010 joint use poles (9%) with FPL attached and FPL owned 67,149 joint use poles with Verizon attached. Thus, Verizon increased its pole ownership interest by 15% over that period.
10. Verizon or its predecessors had been attaching to FPL's poles since 1928. CATV companies did not start attaching until 1970.
11. On January 1, 1975, GTE and FPL entered into their second joint use agreement. *See* Complaint, Lindsay Aff. Exh. 1. The terms and conditions of this agreement were based on the 1961 agreement, but the rates to attach were modified and the fallback rate that would apply if negotiation failed was removed. This was the second opportunity GTE had to negotiate the adjustment rate for joint use. The current joint use attachments fall under the terms and conditions of this agreement, except as amended by the March 29, 1978 Supplemental Agreement, *see* Complaint, Lindsay Aff. Exh. 2, and the 2007 Confidential Letter of Agreement between Florida Power and Light and Verizon Florida LLC, dated September 27, 2007, *see* Complaint, Lindsay Aff. Exh. 3.
12. GTE's third opportunity to negotiate the joint use adjustment rate came in 1978 when GTE and FPL negotiated the supplemental agreement to the joint use agreement. This agreement was put in place primarily to address the joint use adjustment rate.
13. [REDACTED]
14. The joint use agreements with FPL have given Verizon the right to set as many new joint use poles as it desires. These agreements did not force parity, but did encourage parity. The joint use adjustment rate was just one of the means used to encourage pole ownership parity. FPL never discouraged Verizon from owning poles, nor did FPL deny them the right to set new poles. However, Verizon voluntarily elected to pay the annual joint use adjustment rate rather than owning the poles.
15. This history shows that Verizon (or its predecessors) took part in authoring the document upon which the joint use agreements were based. Additionally, Verizon (or its predecessors) successfully negotiated a rate to attach for the joint use agreements with FPL three different times after years of paying no fees and affirmatively chose not to negotiate terms in 2007 when Verizon was given another opportunity to do so.

**II. NATURE OF THE JOINT USE AGREEMENTS BETWEEN FPL AND VERIZON**

16. The approximately 74,000 poles FPL currently shares with Verizon were built under terms of the joint use agreement. Since 1975, the parties' joint use agreement has always required FPL to build its joint use poles tall and strong enough to accommodate Verizon.

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The mutual benefit of joint use is to share infrastructure costs and to reduce pass-through costs to customers. In its simplest form, the joint use agreement obligates the pole owner to build and maintain a pole that is taller and stronger than the pole owner needs to serve the owner's customers. The joint use agreement between FPL and Verizon places no make-ready or permitting requirements on either party for normal construction needs because the pole networks are engineered and constructed with joint use in mind. Perhaps most importantly, the joint use agreement gives both parties responsibility for the safety and reliability of the joint use networks. This creates a mutually dependent relationship that necessitates fair treatment between the parties. This agreement has never been a "space rental" agreement like the pole attachment agreements between pole owners and cable companies or CLECs.

17. Pursuant to the joint use agreement, FPL installs poles tall enough and strong enough to accommodate Verizon's attachments. To accommodate Verizon's four feet of space, FPL must install a pole 94-100 inches taller than it needs to serve its electric customers and, in many cases, two classes stronger. For this accommodation, FPL typically must spend about 50% more on the installation of a pole to make it a joint use pole. The 100 inches of additional height comes from the four feet of space required by the agreement plus 40 inches of communications worker safety space. Additionally, poles are only sold in five-foot increments and the taller the pole, the deeper it must be installed in the ground. Therefore, to install a ten feet taller pole, twelve inches is added for the additional depth requirement.
18. On a number of occasions, FPL has offered Verizon a pole attachment agreement to Verizon that is comparable to the agreements FPL has with other attachers. *See Exhibit D, May 30, 2012 Offer.*

### **III. Benefits Verizon Receives Under the Joint Use Agreement and Corresponding Additional Costs Borne by FPL and its Customers under the Joint Use Agreement**

19. FPL has made substantial capital investments in setting joint use poles under the Agreement. These costs include capital, operating and maintenance as well as other carrying costs, including for example, permitting costs, pre-inspection costs, make-ready costs, post inspection costs, insurance, and security. Verizon's payments under the Joint Use Agreement partially offset in part the cost of those investments. FPL's customers would bear the incremental costs incurred for and on behalf of Verizon, to the extent the investment is not recovered through joint use rates.
20. The joint use agreement obligates the pole owner to operate and maintain the joint use pole for the life of the joint use attachment – not the pole. That means when the FPL pole reaches end of life or when the Department of Transportation forces relocation of the pole for roadwork, FPL is responsible for replacing the pole without contribution from Verizon. In accordance with the joint use agreement, FPL sets a new replacement that will accommodate Verizon's joint use attachments. FPL also has other expenses associated with pole ownership such as insurance, property taxes, administrative fees, costly ongoing inspection fees for poles, trimming fees, expensive storm repair, and personal injury, trespass and property damage claims associated with pole ownership.



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21. The joint use agreement requires that the pole owner consider and design for the needs of the joint use attacher when designing a new pole line. If Verizon indicates they will be using the pole line, FPL will design the pole line to accommodate Verizon's facilities and work with Verizon to place the poles where they suit both companies' needs. Other attachers pay for make-ready work and pole replacements to increase capacity, or they go underground. FPL may also deny other attachers access for reasons of capacity, reliability, safety, or applicable engineering concerns.
22. Since the joint use pole line was designed for joint use with Verizon, Verizon is not required to obtain advance approval to make attachments. Other attachers must follow the permit application process, in which they are charged a fee to compensate FPL or FPL's vendor for the permit review effort. This process may take a period of time.
23. FPL pole lines built to accommodate Verizon under the joint use agreement require no survey or engineering of clearance or structural impact from Verizon. These were all provided to Verizon at FPL's cost when the poles were installed. Other attachers must use the measurement worksheet to confirm that adequate clearances exist for the installation of its attachment. In addition, the measurement worksheet is used to prepare and submit a strength study for wind-loading, including calculations according to FPL requirements specified in FPL's Permit Application Process Manual. These other attachers must provide the measurement worksheet and engineering strength study for wind-loading for each FPL pole.
24. FPL does not routinely check Verizon's attachment after installation because the design of their facilities is incorporated within FPL's design under the joint use agreement. Other attachers are subjected to a post-attachment inspection of each attachment and are responsible for the costs associated with that inspection.
25. Because of joint use, Verizon has had unfettered access to FPL poles without scrutiny over whether an attachment was authorized. Verizon thus has never been subject to an unauthorized attachment fee. When other attachers do not follow the application process, they are subject to unauthorized attachment fees for subjecting the pole line to safety and reliability issues.
26. Where the joint use agreement calls for the exchange of a payment for make-ready, Verizon is only charged direct overheads that are required for the work. Other attachers pay an allocation of all applicable overheads for make-ready work, including, for example, administrative and general ("A&G") expenses.
27. The joint use agreement requires the pole owner to obtain rights-of-way for the joint user, to the extent that they are able to obtain those rights. Verizon has benefitted from FPL obtaining those rights-of-way for Verizon. This involved individual negotiations, contracts, land records research and recordings, with thousands of real property holders. In many cases Verizon has been able to attach to FPL poles without ever communicating with the land owner. Verizon's competitors have had to and continue to obtain their own rights-of-way.

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28. The joint use agreement gives Verizon four feet of space on a joint use pole in which to make its attachments. It also guarantees Verizon the right to the preferred spot on the pole – the lowest position – which ensures easy access and quick construction methods.
29. The joint use agreement requires the pole owner to change out a pole under several circumstances to accommodate the joint user. FPL is not required to change out a pole for other attachers.
30. Under the joint use agreement, Verizon pays the joint use adjustment rate annually in arrears. Verizon's competitors pay their pole attachment fee in advance.
31. As a pole owner and joint user, Verizon has the right to take ownership of a pole being abandoned by FPL if FPL is leaving the pole line. Verizon's competitors are required to relocate their facilities (if Verizon is not taking ownership of a pole and assuming they have a license agreement with Verizon) so FPL can remove the pole.
32. FPL shares its common grounding pole-bond with Verizon and is required to bond the pole in a manner that meets the requirements of the joint use agreement. If other attachers require bonding that is not currently on the pole, they are required to reimburse FPL for the necessary work.
33. Under the joint use agreement, liability is allocated based on responsibility. Other attachers are required to indemnify FPL and carry insurance coverage listing FPL as an additional insured.
34. Under the joint use agreement, Verizon is not required to provide performance assurances in relation to its attachments. Other attachers must provide a performance bond or letter of credit to reimburse FPL for removing its attachments in the event the other attacher goes out of business.
35. In many cases the addition of Verizon's attachments to an FPL pole adds significant load on the pole for design purposes. This is primarily driven by the increase in pole height and the girth of the Verizon cable. As a joint use pole owner, FPL is required to accommodate the doubling of the load factor or increase in capacity without a contribution in aid of construction.
36. Verizon still has copper cable on the poles. Copper cable sags 1 to 2 feet lower than the cable used by other attachers. This means Verizon's attachment must be installed 1 to 2 feet higher on the pole in the available communication space. This occupation of additional space has the effect of precluding at least one or two other attachments in the communication space. This effectively makes usable space unusable, to the detriment of Verizon's competitors. *See Exhibit E, Illustration.*

**IV. JOINT USE RATES, NEGOTIATIONS BETWEEN THE PARTIES, INVOICING AND PAYMENTS**

**A. Joint Use Rates**



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37. The joint use agreement provides Verizon with four feet of space on the pole, which Verizon uses when needed. FPL has designed and constructed all of its joint use poles to which Verizon attaches based upon the need to accommodate Verizon. This is done by FPL at its own expense and at no extra cost to Verizon. The joint use agreement also provides six feet of space to FPL on a Verizon pole. I have attached to this declaration a photograph of two Verizon poles on which communications and/or cable television wireline is attached in the top six feet of Verizon's joint use pole, which is assigned to FPL under the agreement. *See Exhibit F, Photograph of Verizon Poles.* Presumably Verizon is charging pole attachment fees for these communications and cable attachments. FPL receives none of the revenues Verizon receives from attachments in the FPL space because the joint use agreement does not provide for sharing this revenue. Similarly, there may be instances where communications or cable attachments have been placed in the four feet of space assigned to Verizon. The same contractual provisions apply: revenue from third parties does not impact that annual joint use rate. Permitting third party attachers in unoccupied space is consistent with the FCC guidelines in the First Report and Order implementing the 1996 Telecommunications Act provisions modifying the Pole Attachments Act. In that order, the Commission mandated that utilities may not reserve available capacity on their facilities for future utility-related use unless the reservation is made pursuant to a bona fide development plan and that utilities must permit use of such reserved space by third-party attachers until the utility has an "actual need" for the space. As contemplated by the joint use agreement, if Verizon were to need additional use of their four feet of space, FPL accommodates Verizon at no additional cost to Verizon.
38. FPL uses the FCC's presumptive pole height of 37.5 feet in its rental rate calculations. Verizon's use of a 41 foot pole height is unsupported and erroneous. FPL purchases and installs distribution poles of about fifteen different pole class and length configurations for the distribution system every year. Verizon and their competitors likely attach to as many as ten or more of these different pole types and sizes, including many poles that are 25 and 30 feet in height. FPL does not track individual poles that have been installed and remain in service. This is the basis for using the FCC presumption.
39. The origin of the 41-foot figure erroneously used by Verizon in its rate calculations stems from Verizon's misplaced reliance on a 2010 worksheet that FPL uses to calculate the average cost of a joint use pole for the joint use adjustment rate in accordance with the formula in the 1978 supplemental agreement. FPL provided this information to Verizon as support for calculation of the joint use adjustment rate based on 2010 data. The data pertains solely to 35, 40 and 45 foot poles installed over the preceding six years, not the entire population of joint use poles. Verizon's erroneous use of this error was addressed in FPL's [REDACTED]
40. Additionally, while Verizon seeks to rebut one presumption under the FCC formula, it ignores other pertinent factors. Verizon has not adjusted the number of attaching entities downward to reflect the fact that it is closer to two, rather than five, and Verizon has not accounted for its four-foot space reservation.

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41. The rates FPL would be permitted to charge Verizon under the old telecommunications rate for 2011 and 2012 would be \$14.11 and \$14.83 per foot of space used, respectively, using the presumptive average of 5 attaching entities. However, these rates do not account for the fully allocated costs of the attachments or the additional value and cost of providing the additional services provided to Verizon that are not provided to CLECs. Moreover, these rates do not account for Verizon's four- foot space reservation.

**B. Negotiations between FPL and Verizon**

42. I was the primary negotiator with Mr. Lindsay from June 27, 2011 until he ceased participating in negotiations on June 26, 2012. From this point through April 23, 2013 when FPL filed suit in Florida state court, John Bachmore was FPL's primary point of contact for negotiations at Verizon. I have participated in negotiations with Verizon from beginning to end. No Verizon representative has maintained continuity in negotiations from beginning to end.
43. On December 9, 2011, Verizon invited FPL to meet to negotiate a new agreement. In that letter Verizon also provided notice of terminating the parties' joint use agreement. The termination became effective six months later, June 9, 2012. As of that date, Verizon relinquished its contractual right to have FPL install poles tall enough to avoid make-ready work when Verizon intends to attach.
44. No company officers were present at the January 27, 2012 meeting referenced in Mr. Lindsay's affidavit. Mr. Lindsay states incorrectly that "FPL consistently denied that federal law provided Verizon any right to rate relief with respect to the facilities that Verizon had attached to FPL's poles prior to the July 12, 2011." See Complaint, Lindsay Aff. ¶ 11. Minutes taken by Verizon employee Sam Wasmundt of the various negotiating meetings held with Mr. Lindsay prior to the meeting on January 27, 2012 demonstrate that FPL recognized the relevance of federal law. See Exhibit G, Negotiation Minutes. These minutes also demonstrate the substantial effort FPL expended in meetings and preparation while trying to find creative ways to transition Verizon's existing attachments under the joint use agreement to an agreement with terms and conditions similar to those FPL has with other attachers. These efforts were driven by Verizon's desire to get the same rate other attachers and FPL's need to protect its customers' investments in pole plant under the joint use agreement.
45. In the meeting on January 27, 2012, the parties had what appeared at the time to be a productive initial meeting discussing the issues. Verizon inquired regarding what it would take to obtain rates similar to FPL's CLEC and cable rates. Once again, FPL explained that FPL and its customers invested in taller and stronger poles to accommodate Verizon's attachments under the joint use agreement and in return Verizon agreed to pay the joint use rate. FPL explained that accepting anything less would come under scrutiny of the Florida Public Service Commission. FPL asked Verizon if there was something Verizon could offer in return to offset the additional cost associated with joint use so the FPL could offer a lower rate and be kept whole. Verizon was unable to offer anything at the table, but said they understood and would consider it.

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46. FPL offered Verizon a pole attachment agreement similar to their competitors for new attachments, even though granting ILECs access is not required by law. Additionally, FPL sought to explore ways to bring the existing attachments under the same rate as their competitor while making the electric customers whole. During these negotiating meetings, Verizon declined to acknowledge that its rights under the existing joint use agreement were in no way comparable to other attachers' rights, and refused to consider any offers that did not ultimately approximate the CLEC rate. At the end of the January 27, 2012 meeting, Verizon representatives indicated that they would consider FPL's proposals. However, the very next communication from Verizon was a carbon copy of Verizon's [REDACTED]

[REDACTED]

[REDACTED]

49. The negotiations continued for approximately five more months but no resolution was reached. Verizon continued to withhold payment.



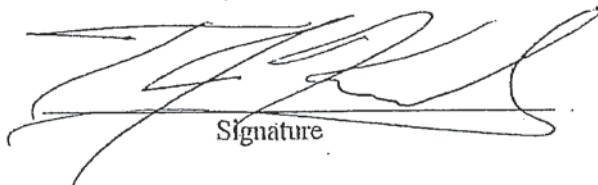
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C. Invoicing and Payments

50. On February 29, 2012, FPL issued an invoice to Verizon for \$2,097,293.70 for services rendered in 2011. I contacted Verizon representatives in April 2012, when Verizon's payment was thirty days past due, and again in May, when the payment was sixty days past due. On or about June 20, 2012, following a series of unanswered calls and emails, I reached out by telephone to Cissy George, Verizon's Director - National Engineering Transformation, who at the time was in charge of their nation-wide joint use program, to advise her that the payment for services rendered in 2011 was approaching ninety days past due. She responded by stating, "I am looking into it right now and reaching out to our Legal team for an update." On about June 22, 2012, [REDACTED] but only if Verizon paid FPL at least \$1,179,307.43 for services rendered in 2011, which was the amount that Verizon did not dispute. This amount for 2011 included half of the year Verizon would be charged at the joint use rate of \$35,465/yr to attach to FPL poles with FPL being charged \$35,465/yr to attach to Verizon poles, while the other half of the year Verizon would be charged \$8,5188/yr to attach to FPL poles and FPL would be charged \$35,465/yr to attach to Verizon poles. Verizon made a payment of \$1,179,307.43 to FPL on July 18, 2012, 111 days past due and 171 days after a full year of service was rendered to Verizon by FPL. Verizon still owes FPL \$917,986.27 for services rendered in 2011.
51. On May 15, 2013, FPL issued an invoice to Verizon in the amount of \$2,319,985.02 for services rendered in 2012 and for true-up survey billing. On July 9, 2013, 55 days past due, FPL received a payment of \$638,413.55 from Verizon. Verizon claims this payment represents full payment for the survey true-up of previous years, plus \$8.52/yr (which is Verizon's calculation for 2011, not 2012) for the net number of poles to which Verizon was attached. Verizon still owes FPL \$1,681,571.47 for services rendered in 2012.
52. At all times, FPL's annual pole attachment invoices continued to credit Verizon for FPL attachments on Verizon's poles at the agreed-upon rate in the Agreement.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 4, 2014

  
Signature

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**DECLARATION OF THOMAS J. KENNEDY**

**List of Exhibits**

Exhibit A, 1959 Minutes

Exhibit B, 1961 Joint Use Agreement

Exhibit C, EEI-Bell Report

Exhibit D, May 30, 2012 Offer

Exhibit E, Illustration

Exhibit F, Photograph

Exhibit G, Negotiation Minutes

**EXHIBITS OMITTED BUT PREVIOUSLY FILED WITH RESPONDENT FLORIDA  
POWER AND LIGHT COMPANY'S APRIL 4, 2014 RESPONSE TO VERIZON  
FLORIDA LLC'S COMPLAINT, FILE NO. EB-14-MD-003**

## Exhibit 2

































































































## Exhibit 3

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## RIGHT-OF-WAY AGREEMENT

40429

KNOW ALL MEN BY THESE PRESENTS that the FEDERAL REALTY & DEVELOPMENT COMPANY, a Corporation organized and existing under the laws of the State of Florida, County of Lee and State of Florida, in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, receipt of which is hereby acknowledged, does hereby grant to the Florida Power & Light Company, a corporation organized and existing under the laws of the State of Florida, whose address is P. O. Box 3100, (25 S. E. 2nd Avenue) Miami, Florida, and to its successors and assigns an easement forever for a right-of-way 160 feet in width to be used for the construction, operation and maintenance of one or more "H" frame or tower electric transmission and distribution lines, including wires, poles, anchors, towers, guys, telephone and telegraph lines and appurtenant equipment, in, over, upon, and across the following described lands of the Grantor situated in the County of <sup>Charlotte</sup> ~~Lee~~ and State of Florida and more particularly described as follows:

R.L.C.

Sections 5, 6 and 8 and the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  and the S $\frac{1}{2}$  of NE $\frac{1}{4}$  of Section 9, all being in T40S, R23E, Charlotte County, Florida.

The centerline of this right-of-way, 160 feet in width, is described as beginning at a point on the North line of said Section 6 which point is 983.2 feet West of the Quarter Section corner on said line run southeasterly at an angle of 45° 16' 45", East to Southeast, for 5,198.2 feet to a point of deflection, thence deflect left 20° 54' 10" and continue southeasterly to a point on the East line of said Section 9 which point is 382.95 feet south of the quarter section corner on said East line.

R.L.C. together with the right and privilege to reconstruct, inspect, alter, improve, remove or relocate <sup>right-of-way</sup> such transmission and distribution lines on the lands above described, with all rights and privileges necessary or convenient for the full enjoyment or the use thereof for the above mentioned purposes, including the right to cut and keep clear all trees and undergrowth and other obstructions within the limits of

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said right-of-way and all trees of such height on lands of Grantor adjoining said right-of-way that may interfere with the proper construction, operation and maintenance of said electric transmission and distribution lines, and also including the right of ingress and egress over adjoining lands of Grantor for the purpose of exercising the easement herein granted.

The Grantee hereby agrees to maintain at its own cost and expense, gates at such places as Grantee may find it necessary to gain entrance to the lands of the Grantor for ingress and egress to the easement granted to the Grantee where such entrance is not through a regularly established and maintained gate of the Grantor.

By its acceptance of the easement herein granted and the installation of the facilities hereunder, the Florida Power & Light Company agrees to hold the Grantor harmless from and against claims for damages attributable to the installation, operation or maintenance of such facilities; and also agrees to indemnify the Grantor as to any damages occasioned to the property of the Grantor by reason of the installation, operation or maintenance of such facilities.

It is understood and agreed that, in the event Florida Power & Light Company should abandon said right-of-way, it will release to the Grantor or its heirs, successors or assigns the said right-of-way granted herein.

The Grantor, however, reserves the right and privilege to use the above-described right-of-way for agricultural and all other purposes except as herein granted or as might interfere with Grantee's use, occupation or enjoyment thereof.

IN WITNESS WHEREOF, the Grantors have hereunto affixed their hands and Seals this 12 day of October, 1955.

Signed, sealed and delivered  
in the presence of:

FEDERAL REALTY & DEVELOPMENT  
COMPANY

W. M. Brian  
Attest

C. L. Holloway

Raymond H. Chodurich  
President  
James W. House  
Secretary

BOOK

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STATE OF FLORIDA

COUNTY OF LEE

ss:

I hereby certify that on this 12 day of October 1955, before me personally appeared Rosamund L. Chadwick and Simeon W. Rouse, respectively, President and Secretary of Federal Realty & Development Co. a corporation organized under the laws of the State of Florida to me known to be the persons described in and who executed the foregoing instrument, and severally acknowledged the execution thereof to be their free act and deed as such officers, for the uses and purposes therein mentioned; and that they affixed thereto the official seal of said corporation and that said instrument is the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Fort Myers in the County of Lee and State of Fla., this 12 day of October, 1955

C. L. Holloway  
Notary Public for the State of

My commission expires: 12-26-55



HELEN WOTITZKY

OCT 12 1955 PM

CLERK OF CIRCUIT COURT



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Parcel No. 27

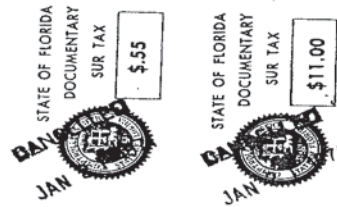
KNOW ALL MEN BY THESE PRESENTS that C. T. ADAMS and MAXCINE L. ADAMS, his wife

of the County of Manatee and State of Florida  
 in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, receipt of which is hereby acknowledged, do hereby grant to the Florida Power & Light Company, a corporation organized and existing under the laws of the State of Florida, whose address is P. O. Box 3100, (25 S. E. 2nd Avenue) Miami, Florida, and to its successors and assigns, an easement forever for a right-of-way 330 feet in width to be used for the construction, operation and maintenance of one or more electric transmission and distribution lines, including wires, poles, "H" frame structures, towers, anchors, guys, telephone and telegraph lines and appurtenant equipment, in, over, upon and across the following described lands of the

Grantor s, situated in the County of Manatee and State of Florida and more particularly described as follows:

The West 330 feet of the N $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Section 1,  
 Township 35 South, Range 18 East,

THIS INSTRUMENT WAS PREPARED BY W. E. SIRMANS, JR.  
 FLORIDA POWER & LIGHT COMPANY  
 P. O. BOX 1119 SARASOTA, FLORIDA



together with the right and privilege to reconstruct, inspect, alter, improve, remove or relocate such transmission and distribution lines on the right-of-way above described, with all rights and privileges necessary or convenient for the full enjoyment or the use thereof for the above-mentioned purposes, including the right to cut and keep clear all trees and undergrowth and other obstructions within said right-of-way and all trees of such height on lands of Grantor s adjoining said right-of-way that may interfere with the proper construction, operation and maintenance of said electric transmission and distribution lines, and also including the right of ingress and egress over adjoining lands of Grantor s for the purpose of exercising the easement herein granted.

The Grantor s, however, reserve the right and privilege to use the above-described right-of-way for agricultural and all other purposes except as herein granted or as might interfere with Grantee's use, occupation or enjoyment thereof, or as might cause a hazardous condition; and provided further by way of illustration and not of limitation to the grant herein made, no portion of the right-of-way shall be excavated or altered without written permission of the Grantee and no building, structure or obstruction shall be located or constructed on said right-of-way by the Grantor s, their successors, heirs or assigns.

IN WITNESS WHEREOF, the Grantor s have executed this agreement this 11<sup>th</sup> day of November, 19 70.

Signed, sealed and delivered in the presence of:

W. E. Sirmans, Jr.  
Seal L. Sirmans

C. T. Adams (SEAL)  
Maxcine L. Adams (SEAL)  
 Maxcine L. Adams, his wife  
 (SEAL)  
 (SEAL)

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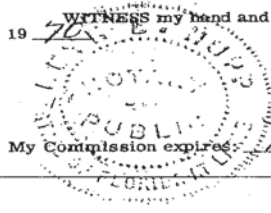
STATE OF FLORIDA AND COUNTY C

MANATEE

I, a Notary Public in and for the County and State aforesaid, do hereby certify that C. T. Adams

and Maxcine L. Adams, his wife known to me, personally appeared before me and acknowledged the execution of the foregoing instrument for the uses and purposes therein expressed.

19 76 12 4 day of NOVEMBER



Ruth L. Nappa  
Notary Public, State of Florida at Large

My Commission expires: Nov 22 19 72

STATE OF FLORIDA AND COUNTY OF \_\_\_\_\_

I HEREBY CERTIFY that before me, personally appeared \_\_\_\_\_, respectively,  
\_\_\_\_\_, President and \_\_\_\_\_ Secretary of \_\_\_\_\_  
a Corporation organized under the Laws of the State of \_\_\_\_\_, to me known to be the persons described  
in and who executed the foregoing instrument, and severally acknowledged the execution thereof to be their free act and deed as such  
officers, for the uses and purposes therein mentioned; and that they affixed thereto the official seal of said corporation and that said  
instrument is the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_  
in the County of \_\_\_\_\_ and State of Florida, this \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_\_

\_\_\_\_\_  
Notary Public for the State of Florida

My Commission expires: \_\_\_\_\_ 19 \_\_\_\_\_

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## Exhibit 4



# **EXHIBIT B**



**Before the  
Federal Communications Commission  
Washington, DC 20554**

	)	
Verizon Florida LLC	)	
	)	
	)	
	)	Complainant,
v.	)	
	)	
Florida Power & Light Company, LLC	)	
	)	
	)	Respondent.
	)	

**Declaration of Roger A. Spain, CPA, CFA, ABV, CVA**

**I. Background Information**

1. My name is Roger Spain and I have been engaged to review joint use pole attachment rates for poles jointly used by Florida Power & Light Company ("FPL") and Verizon Florida LLC ("Verizon"). After performing my review, I have made several observations and reached several conclusions, which are set forth below in this declaration.
2. I am a principal with Aldridge, Borden & Company, P.C. in Montgomery, Alabama. We are a CPA firm providing a wide range of specialized services, including management consulting, strategic planning, litigation consulting, business valuation, mergers and acquisitions consulting, tax planning and compliance, auditing, and information technology consulting.
3. My own areas of expertise include accounting and business consulting in several industries, including the utility industry. As an auditor, I have performed numerous audits of electric distribution utilities, and several other types of utilities over the past 24 years. I have



also performed numerous consulting engagements in the utilities arena, including cost of service studies, rate analysis and design engagements, property plant and equipment analyses, and feasibility studies. Companies for whom I have performed these services have been electric providers, telephone companies, cable television and satellite dish companies, natural gas companies, retail propane companies and water systems. I also have significant experience in auditing and tax related work in the general business environment. I am a Certified Public Accountant. I hold various business valuation related credentials including the Chartered Financial Analyst designation through the CFA Institute, the American Institute of Public Accounting's Accredited in Business Valuation credential, and the Certified Valuation Analyst designation through the National Association of Certified Valuation Analysts. I have a B.S. in Business Administration (Accounting) from Auburn University.

4. I have testified regarding pole attachment issues before the Federal Communications Commission and in North Carolina and Florida state courts. I have testified concerning various other financial and economic issues in Federal Court, various state courts and before the Alabama Public Service Commission. Attached is a current copy of my CV, list of prior testimony and list of published articles.

## **II. The Value to Verizon of Voluntary Access to FPL's Ready-Made Infrastructure Network**

5. There are substantial benefits that are unique to Verizon as a joint user, as opposed to a third party attacher. These include the fact that the network of joint use poles was designed, built and maintained by FPL to accommodate Verizon's lines in the service area Verizon required without the need for make ready and without the effort and time that is usually required of third party attachers. Although it is difficult to value this unique position of Verizon, it is clear that being a joint user, as opposed to a third party attacher, has afforded Verizon substantial value associated with ready access to a network of poles that provided Verizon with the infrastructure it needed to serve customers and result in greater market share.

6. In the case of FPL and Verizon, both entities have needed access to a network of poles to deliver their services. For numerous reasons the parties agreed to share the cost of building one jointly used network suitable to both parties. When entering this agreement and relationship, each party knew that it would invest significant sums up front and carry the physical and financial responsibility of pole ownership and maintenance, or that it would pay an agreed upon amount for joint use rental payments in lieu of those investment and ownership costs.

7. Viewed in this important historical context, joint use rental payments are an alternative to the significant costs of pole network construction and ownership. These alternatives cannot be separated because one party has avoided a greater burden of the ownership costs and later deems its joint use cost to be higher than it wishes. It stands to reason that in situations where one party has made very little investment in the jointly used network of poles with another party, the party that has carried a low construction and ownership burden should pay much more in the alternative periodic joint use rental payments.

8. In the event that one party owns substantially less of the joint use network than its allocated share of costs under the joint use agreements, that party will pay a higher rental expense but avoid corresponding construction and ownership costs. In light of these two alternatives, joint user rates can be viewed as a proxy for the joint user's share of ownership costs, and thus paying a joint user rate is analogous to paying avoided ownership costs. Cost sharing agreements are fundamentally altered when the cost allocation or contractual rate calculation is changed. Had each party constructed and maintained a number of poles equivalent to achieve its allocation percentage, there would be little or no net joint use payments. Rather, each party would be paying for its allocated share of this jointly used network of poles through construction and ownership costs, with no need for a joint use payment to adjust for the disparate ownership costs. Only when one party has avoided capital investment in and annual maintenance of its allocated share of the joint use network of poles (as did Verizon) is there a need for a joint use payment.

9. Based on data provided to me by FPL, I understand that the average cost in 2015 dollars of an installed distribution pole (as accounted for in account 364 and net of a 15% appurtenances factor) is \$586.41. Thus, the installed cost of the approximate 67,149 FPL owned poles to which Verizon is attached is approximately \$39.4 million. By contrast, Verizon's investment in its approximate 7,010 owned joint use poles to which FPL is attached is \$4.1 million. The capital investment in jointly used long lived assets by the participating parties is markedly disparate, with FPL investing almost 10 times the amount invested by Verizon.

10. These replacement cost values are based solely on the cumulative in place cost of the individual poles constructed by each joint user party. This total cost for each company does not include any estimation for the enhanced value of those poles as part of a network of poles that

provides users access to an elevated utility corridor, which would arguably increase the value of these poles substantially.

11. As a result of Verizon's relatively small investment in infrastructure, Verizon has maintained a much lower risk profile as compared to its joint use partner, FPL. This lower risk position held by Verizon is the result of having less invested in long lived assets that carry the ordinary burdens of ownership and may be subject to obsolescence in the case of a company operating in an industry where technological advances are an integral part of the landscape. In cases where a company is able to avoid this risk, that company receives a significant benefit that should carry some cost, as the avoidance of risk has economic value.

12. Verizon received quicker access as well as earlier access to a ready-made network of poles than its third party attacher competitors during the voluntary access period until 1996. Third party attachers did not have the right to access this network of poles until 1996, unless specifically granted by the pole owner. This quick and early access provided Verizon great value as the first to the market for signing on new and additional customers.

13. The value to Verizon of ready access to the network of poles built by FPL is borne out in the market share statistics that show that ILECs maintain a 98% market share in the residential wireline market in Florida. Additionally, ILECs have a 49% market share as compared to 51% for all other CLECs combined in the competitive business wireline marketplace. Overall, ILECs have a 68% market share in the total wireline market.<sup>1</sup> Although it is difficult to determine the value of the quick market access provided to Verizon as a joint user, the long standing majority ILEC provider of wireline services has enjoyed the benefit of being the first to enter the market in a given territory as a joint user in the wireline market. This benefit included being the first and

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<sup>1</sup> The Report on the Status of Competition in the Telecommunications Industry as of December 31, 2013, Florida Public Service Commission, Pages 14 and 15.



often initially the only provider of communication services to customers. This initial position has situated Verizon (and other joint user ILECs) to maintain a strong and majority presence in its wireline markets. The value of this aspect of Verizon's position as a joint user as opposed to a third party attacher's position, is real and significant and contributes to Verizon's wireline revenues of \$15.6 billion in 2014.

14. In the three county joint use territory at issue in this case, the voluntary access period spanning from the 1975 joint use contract date to 1996 gave Verizon access to markets and customers at greater speed than to other service providers. Additionally, I understand from FPL's counsel that the period prior to 1975 wherein there was a joint use agreement between Verizon and FPL likewise would have afforded Verizon speedy access to customers. Thus, by virtue of the substantial pole network constructed by FPL and attached to by Verizon during the joint use period prior to 1996, Verizon gained a strong market position. Even today, Verizon has a strong market position that is derivative of these early years of joint use access that its competitors did not enjoy.

15. The majority of CLEC switched access lines are resold ILEC services,<sup>2</sup> wherein the ILEC still generates monthly revenue from its physical telephone plant and infrastructure, a portion of which is attached to joint use poles. Thus, even a substantial portion of the retail customer accounts lost to competition is still a source of revenue to ILECs such as Verizon.

16. There is also a value of an ILEC's line in place due to its use in handling wireless traffic. As a joint user and a large wireless service provider, Verizon was able to build its wireline infrastructure to handle wireless traffic by participating in the design phase of construction and gaining quick access to the erected poles. Verizon now enjoys the benefits of ownership of

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<sup>2</sup> Local Telephone Competition: Status as of June 30, 2013, Industry Analysis and Technology Division Wireline Competition Bureau Jun 2014, Federal Communications Commission, Page 10.

substantial wireline infrastructure that is beneficial to its end user account wireline services, its resold wireline services, and its wireless traffic infrastructure.

17. In addition, since Verizon initiated basic wireline service under the joint use agreement in or about 1975, it has expanded the service provided across its wirelines attached to FPL's pole to include additional services. Therefore, Verizon provides significantly more services today than when it originally attached its lines to FPL's poles and therefore likely earns significantly more revenue proportionate to each joint use attachment and from each customer served by such attachments. (See [www.verizonspecials.com/fios/fl](http://www.verizonspecials.com/fios/fl) - last visited June 24, 2015.) As Verizon has increased its revenues from existing wireline customers through the expansion of its services, arguably it has benefited from an increase in the value of those customers. It is difficult to reconcile Verizon's desire to pay less for pole rental today after experiencing an arguable increase in the value of its customer relationships that originated in a period wherein Verizon had competitively quick and early access to these new customers as compared to its competitors.

18. In two transactions, with the latest sale transaction pending regulatory approval, Verizon has sold a substantial number of access lines and related property, plant and equipment to Frontier Communications at an average price of approximately \$1,638 per access line. The number of the access lines sold in these transactions or the amount of the value of the total transaction price per access line that is derivative of or related to the quick or first to market issues, or principals discussed above is not readily known; but, many of those access lines and some portion of their value is attributable to the aforementioned benefits available to Verizon as a joint user.

### **III. Verizon Has Received the Time Value of Money Associated with Joint Use Payments**

19. Verizon gains value relating to the time value of money through its position as a joint user that is not available to FPL's third party attachers. Verizon is permitted to pay its joint use obligation to FPL in May of the calendar year following the attachment time period to which the rental payments relate. Third party attachers are required to pay for six months of attachments in December or June immediately prior to the first and second half of the calendar year, respectively. The time lag between third party attachers' advance payment dates and Verizon's joint user payment date in arrears is an average of 14 months. (That is 17 months difference for the first half of the year and 11 months difference for the latter half of the year.) Assuming a cost of capital for Verizon of 5.6%<sup>3</sup> and an annual joint user settlement of \$2,194,474 (the 2013 net invoice amount), the benefit to Verizon as a joint user, as opposed to a third party attacher, is \$143,450, annually. Just this time value of money resulting from the difference in payment timing is a benefit to Verizon of \$2.14 per pole per year.

### **IV. Verizon Has Received the Value of Avoiding Insurance Obligations, Performance Bonds, Letters of Credit and Required Pole Owner Indemnification**

20. Third party attachers are required to provide insurance, performance bonds, letters of credit or indemnification in order to attach to FPL's poles. Verizon, as a contractual joint user, has avoided this burden to which third party attachers are subject. And, the net value realized by a party not required to provide insurance, performance bonds, letters of credit and indemnification in order to attach to FPL's poles, is greater than the net value realized by a party

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<sup>3</sup> Verizon's cost of capital is calculated using a weighted average cost of capital based on the average cost of debt, the two year effective average tax rate, and a capital asset pricing model to calculate the cost of equity.

subject to the requirement to provide insurance, performance bonds, letters of credit and indemnification in order to attach to FPL's poles.

**V. Verizon Has Received the Value of the Right to Acquire Abandoned Poles**

21. The licensee attaching to a joint use pole may acquire poles to be abandoned by the pole owner at "a sum equal to the then value in place of such abandoned pole." This right to acquire is an option and not obligation available to the licensee. Such an option has value to the licensee. In the event that the value used for consideration (or "such other agreed upon equitable sum" as the contract provides) is less than the fair market of an in place pole, the licensee will have the option to exercise its purchase right to its financial benefit. Further, if the abandoning pole owner gave to the joint user abandoned poles with no consideration as a matter of practice, the joint user clearly would receive a benefit in such transactions.

**VI. Verizon Fails to Account for the Cost of Setting Aside the Pricing Element of a Decades Old Contractual Relationship**

22. Many of the benefits inuring to the benefit of Verizon as a joint user are difficult or impossible to quantify accurately due to the manner in which both companies maintain their books and records. At the outset of the joint use agreement, the parties did not anticipate the need to separate or account for certain costs in a manner that would enable either company to quantify the incremental benefit to a joint user versus a third party attacher. After decades of each party enjoying the rights and benefits of this joint use arrangement, it is not practical nor is it possible to fully quantify the value of those rights and benefits. We cannot unring the bell.



23. It is problematic to set aside the rate established by the joint use agreement to which the party that has borne the burden of the majority of pole construction, ownership, costs, and risks is expecting for its existing poles. Setting that contractually agreed upon rate aside in favor of a lower rate applicable to attachers who have not received the benefits afforded to a joint user does not allow the majority pole owner to receive the compensation that both parties expected the majority pole owner to receive. Changing the pricing from the contractually agreed upon amount to something lower while still allowing the joint user licensee to enjoy the benefits of a joint user relationship is a one sided alteration of a decades old agreement between two parties that acknowledged the mutual benefits of an agreement at its outset. The net effect is to unwind the economic expectations that guided the investments made by each party, such that it is impossible to put each party in the same economic position it would have been in had the investments not been made in reliance on the joint use agreement. The parties specifically contemplated this scenario in the event the joint use agreement was terminated, and agreed that the parties would be entitled to remain attached to the existing poles under the same terms and rates of the joint use agreement.

#### **VIII. The Poles Will Cease to Be Joint Use Poles When They Are Replaced for Any Reason**

24. I provide the analysis in this paragraph based upon a representation from FPL's counsel that the "rights and obligations of the parties" under the so-called "evergreen provision" found in Article XI of the joint agreement apply only "with respect to existing joint use poles" and that such rights and obligations do not apply to: (i) new attachment sought by Verizon after it terminated the parties' agreement; (ii) any poles not in existence at the time Verizon terminated

the parties' agreement; or (iii) any "existing joint use pole" that is replaced for any reason. FPL poles may be replaced, among other reasons, because they have reached the end of their useful life, have been damaged, must be made taller or stronger, or facilities must be placed underground. FPL's records indicate that the average age of a 35', 40' or 45' wood pole that was replaced from 2010 to 2014 is 36 years. This means that of the 65,526 wood poles to which Verizon was attached in 2013, on average approximately 1,820 are replaced by a new pole each year. These new poles replaced after the termination of the joint use agreement are no longer the joint use poles to which Verizon had a contractual agreement to attach. Since Verizon's attachments are no longer on the joint use poles, issues concerning the relationship between Verizon as the attacher and FPL as the pole owner now come into play. Does joint use cease at the end of a joint use pole's life? Should Verizon continue to pay the contractual rate for the poles not yet replaced as those poles are still the joint use poles set under the conditions applicable to the agreement? If not, what rights does Verizon have to remain on these poles? Should Verizon pay for make ready costs that it had previously avoided as a joint user? Outside of the joint use agreement, does FPL have any obligation to construct poles sufficient to accommodate Verizon's attachments? Should one consider the replacement cost that Verizon would have to take on to build its own network since its decision in June 2012 to terminate the joint use agreement with FPL? In contrast, allowing the parties' rights and obligations to expire at the natural end of their relationship, as poles are replaced or removed, provides some answers to these questions and avoids upsetting the economic and investment expectations and reliance discussed in paragraph 23 above.

**IX. Alternatively, Considerations to Pricing of Attachments Outside of the Joint Use Agreement**

25. The attachment rate for Verizon to attach to one foot of space on FPL's poles is \$11.54 under the new FCC telecommunications rate for the year 2014. This one foot of space multiplied by two (which is the number of one foot units of space Verizon claims it uses) is \$23.08. This one foot of space multiplied by four (which is the amount of space reserved by and allocated to Verizon under the parties' joint use agreement) totals to a rate of \$46.16. Alternatively, if one uses a space factor in the formula of two or four feet, the rate for the two and four feet of space reserved under the joint use agreement is \$14.29 and \$19.78, respectively. This information is provided in the event that the results of the proceedings relating to this case were that the appropriate rate for Verizon's attachments to the joint use poles with FPL is a rate calculated under the new FCC telecommunications formula.

26. The attachment rate for Verizon to attach to one foot of space on FPL's poles is \$17.49 under the old FCC telecommunications rate for the year 2014. This one foot of space multiplied by two (which is the number of one foot units of space Verizon claims it uses ) is \$34.98. This one foot of space multiplied by four (which is the amount of space reserved by and allocated to Verizon under the parties' joint use agreement) totals to a rate of \$69.96. Alternatively, if one uses a space factor in the formula of two or four feet, the rate for the two and four feet of space reserved under the joint use agreement is \$21.65 and \$29.97, respectively. This information is provided in the event that the results of the proceedings relating to this case were that the appropriate rate for Verizon's attachments to the joint use poles with FPL is a rate calculated under the new FCC telecommunications formula.

27. The above alternative calculations do not take into consideration any of the substantial and unique benefits that Verizon has been afforded under the joint use agreement.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2015

A handwritten signature in black ink, appearing to read "Roger A. Spain". The signature is written in a cursive, flowing style with a large initial "R" and a distinct "Spain" at the end.

Roger A. Spain

## **EXHIBIT 1**

ROGER A. SPAIN, CPA, CFA, ABV, CVA.

Roger Spain is a principal with the accounting firm Aldridge, Borden & Company, P.C., in Montgomery, Alabama. He is a 1990 graduate of Auburn University where he received a Bachelor of Science degree in Accounting.

Roger's area of expertise is in accounting and business consulting. He also has significant experience in the audit and tax services areas. Roger is a Certified Public Accountant (CPA) licensed to practice in Alabama. Also, he has earned the Chartered Financial Analyst (CFA) designation offered by the Chartered Financial Analyst Institute. Roger has also been awarded the Accredited in Business Valuation (ABV) credential by the American Institute of Certified Public Accountants. Additionally, Roger holds the Certified Valuation Analyst (CVA) designation offered by the National Association of Certified Valuation Analysts.

He is active in the Montgomery community through various projects and organizations. Roger is currently a board member of the YMCA. Roger has also served as the President of the River Region United Way. He is also an active member of First United Methodist Church and coaches youth sports.

**Education/Certification**

Bachelor of Science in Accounting, Auburn University, 1990  
Certified Public Accountant, Alabama, 1992  
Certified Valuation Analyst, 2003  
Chartered Financial Analyst, 2006  
Accredited in Business Valuation, 2006

**Areas of Practice**

Business Valuation and Related Advisory Services  
Management Advisory and Consulting Services  
Traditional Accounting and Tax Services

**Services Provided**

Business Valuation and Consulting  
Accounting and Auditing  
Tax Consulting and Preparation

**Professional Memberships**

American Institute of Certified Public Accountants  
Alabama Society of Certified Public Accountants  
National Association of Certified Valuation Analysts  
Chartered Financial Analyst Institute

**Teaching**

Numerous Courses on Utility Accounting throughout the United States  
Auburn University, Professor for a Day Program

## **EXHIBIT 2**



ROGER A. SPAIN, CPA, CFA, ABV, CVA  
4 YEAR HISTORY OF TESTIMONY

2015

Cantu v Baptist Hospital, et al., Lightfoot, Franklin & White, Circuit Court of Jefferson County, Alabama

2013

Hermann v Carter, Cabaniss, Johnston, Gardner, Dumas & O'Neal, Circuit Court of Mobile County, Alabama

2012

Frontier West Virginia Inc. v. Appalachain Power Company and Wheeling Power Company, Balch & Bingham, Federal Communications Commision

2012

Key McClendon v. Sunsouth, LLC, Lightfoot, Franklin, & White, Circuit Court of Barbour County, Alabama

2011

Homeland Vinyl v. Krauss-Maffie, Balch & Bingham, Circuit Court of Jefferson County, Alabama



# EXHIBIT C

VERIZON FLORIDA LLC,	)	
	)	Docket No. 15-73
	)	File No. EB-15-MD-002
Complainant,	)	
v.	)	
	)	Related to
FLORIDA POWER AND LIGHT	)	Docket No. 14-216
COMPANY,	)	File No. EB-14-MD-003
Respondent.	)	
	)	

Complainant Verizon Florida LLC (“Verizon”), pursuant to the Joint Procedural Schedule approved by the Enforcement Bureau on April 16, 2015, respectfully submits the following responses to Respondent Florida Power and Light Company’s (“FPL”) Requests for Production of Documents (“Requests”).

In addition to the specific objections enumerated below, Verizon objects to FPL's Requests as follows:

- 1

explain “why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source”), *id.* § 1.729(h) (providing that discovery in addition to interrogatories – such as document requests – is only available in the Commission’s discretion).

3. Verizon objects to the Requests to the extent that they are “employed for the purpose of delay, harassment or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the pending proceeding.” *Id.* § 1.729(a).

4. Verizon objects to the Requests to the extent that they seek documents that are not within Verizon’s possession, custody, or control.

5. Verizon objects to the Requests to the extent that they seek documents that are or should be in FPL’s possession, custody, or control.

6. Verizon objects to the Requests to the extent that they seek discovery of legal conclusions, contentions, or documents that are publicly available.

7. Verizon objects to the Requests to the extent that they are vague, ambiguous, overbroad, unduly burdensome, oppressive, unreasonably cumulative, or duplicative.

8. Verizon objects to the Requests to the extent that the burden or expense of the production of the requested documents would outweigh any benefit of their production.

9. Verizon objects to the Requests to the extent that they seek documents that are protected from discovery by the attorney-client privilege, the work-product doctrine or any other applicable privilege. Nothing contained in Verizon’s objections is intended to, or in any way shall be deemed, a waiver of such available privilege or doctrine. Verizon will not provide privileged or otherwise protected documents.

10. Verizon objects to the Requests to the extent that they seek documents containing confidential or proprietary information. Verizon will not provide responsive, non-privileged documents containing confidential or proprietary information unless it is protected by the terms of a mutually agreeable Confidentiality Agreement.

11. Verizon objects to FPL's definition of "you," "your," and "Verizon" because it is overbroad, unduly expansive and burdensome, and seeks to impose obligations to produce documents that have no relevance to the material facts in dispute in this proceeding. Verizon will not provide documents beyond those involving Verizon's joint use relationship with FPL.

12. Verizon objects to the Requests to the extent that they seek to impose requirements or obligations on Verizon in addition to or different from those imposed by the Commission's rules. In responding to the Requests, Verizon will respond as required under the Commission's rules.

13. Verizon reserves the right to change, modify, or supplement any response should it become aware of additional facts or circumstances following the filing of these responses.

14. The foregoing general objections are hereby incorporated into each specific objection listed below, and each specific objection is made subject to and without waiver of the foregoing general objections.

### **RESPONSES TO REQUESTS FOR PRODUCTION**

#### **Request No. 1:**

All documents used in answering the Interrogatories propounded by FPL upon Verizon.

#### **Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 2 through 45. Verizon

further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon will produce documents in response to this Request. Verizon also directs FPL to documents that are publicly available, such as the National Electric Safety Code (“NESC”), municipal right-of-way permits, condominium green space covenants, and easements on record in the relevant jurisdictions. Verizon also directs FPL to documents that are or should be within FPL’s possession, such as the Joint Use Agreement (“JUA”) and its amendments, the rate calculation documentation FPL has sent to Verizon, Verizon’s correspondence with FPL regarding the addition and removal of facilities, including P-58 forms, records that Verizon has submitted to the National Joint Utilities Notification System (“NJUNS”), Verizon’s Pole Attachment Complaint and supporting Affidavits and Exhibits, and the parties’ pleadings, Affidavits, and Exhibits in Docket No. 14-216, File No. EB-14-MD-003.

**Request No. 2:**

All documents reviewed or relied upon in providing responses to FPL’s Request for Admissions.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 1 and 3 through 45. Verizon further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that there are no documents that are responsive to this Request.

**Request No. 3:**

Provide copies of all documents that identify Verizon's engineering process for attaching to FPL's poles, including but not limited to any documents that identify the time it takes Verizon to complete each step of the engineering process, and/or the costs associated with such process.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 4, 5, 6, and 18 and further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon will produce documents that are sufficient to show Verizon's engineering process for its attachments to FPL's poles. Verizon also directs FPL to documents that are publicly available, such as the NESC, and to documents that are or should be within FPL's possession, such as Verizon's Pole Attachment Complaint and supporting Affidavits and Exhibits, Verizon's correspondence with FPL regarding the addition and removal of facilities, including P-58 forms, and records that Verizon has submitted to NJUNS. Verizon does not maintain records that "identify the time it takes Verizon to complete each step of the engineering process, and/or the costs associated with such process" in the parties' overlapping service areas.



**Request No. 4:**

Provide all engineering documents created for Verizon attachments to FPL utility poles generated for a period of 5 years prior to the termination of the JUA.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 3, 5, 6, and 18 and further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon will produce documents that are sufficient to show Verizon's engineering process for its attachments to FPL's poles. Verizon also directs FPL to documents that are or should be within FPL's possession, such as Verizon's correspondence with FPL regarding the addition and removal of facilities, including P-58 forms, and records that Verizon has submitted to NJUNS.

**Request No. 5:**

Provide copies of documents concerning and/or relating to Verizon's design standards for pole attachments, including but not limited to clearance requirements and sag requirements.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 3, 4, 6, and 18 and further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon also objects to this Request because it seeks documents that are not relevant to the material facts in dispute in this proceeding.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon will produce documents that are sufficient to show Verizon's design standards for its attachments to FPL's poles. Verizon also directs FPL to documents that are publicly available, such as the NESC and the clearance requirements set forth by the relevant jurisdictions, and to documents that are or should be within FPL's possession, such as Verizon's Pole Attachment Complaint and supporting Affidavits and Exhibits, Verizon's correspondence with FPL regarding the addition and removal of facilities, including P-58 forms, and records that Verizon has submitted to NJUNS.

**Request No. 6:**

Provide copies of documents that refer to and/or relate to Verizon's mid-span clearance requirements exceeding the requirements of the NESC.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 3, 4, 5, and 18 and further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon also objects to this Request because it may not accurately reflect any argument or statement in Verizon's Complaint or supporting Affidavits and/or seeks documents that are not relevant to the material facts in dispute in this proceeding.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that clearance requirements are context-specific and that it has not represented in



this proceeding that, in every situation, its “mid-span clearance requirements exceed[] the requirements of the NESC.” Nonetheless, Verizon will produce documents that are sufficient to show Verizon’s engineering standards for its attachments to FPL’s poles. Verizon also directs FPL to documents that are publicly available, such as the NESC and the clearance requirements set forth by the relevant jurisdictions, and to documents that are or should be within FPL’s possession, such as Verizon’s correspondence with FPL regarding the addition and removal of facilities, including P-58 forms, and records that Verizon has submitted to NJUNS.

**Request No. 7:**

For a period of five years preceding the termination of the JUA, provide copies of documents reflecting or relating to any exchange of documentation between the parties regarding FPL’s review of Verizon’s requests to attach to FPL poles and FPL’s approval or denial of Verizon’s requests to attach.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 8 and 28. Verizon further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon also objects to this Request because it may not accurately reflect any argument or statement in Verizon’s Complaint or supporting Affidavits and/or seeks documents that are or should be within FPL’s possession.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon will produce documents sufficient to show its exchange of information with FPL regarding attachments to FPL-owned poles to which it was not previously attached. Verizon also

directs FPL to documents that are or should be within FPL's possession, such as Verizon's correspondence with FPL regarding the addition and removal of facilities, including P-58 forms, and records that Verizon and FPL have submitted to NJUNS.

**Request No. 8:**

Please provide copies of documents showing any FPL approval or denial of a Verizon request to attach to an FPL utility pole under the JUA.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 7 and 28. Verizon further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome and seeks documents that are or should be within FPL's possession.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon is not aware of documents that are responsive to this Request.

**Request No. 9:**

Provide copies of all documents showing or relating to the alleged increased transfer costs due to Verizon's location on the lowest 4 feet of the pole.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 11, 12, and 13 and further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon directs FPL to documents that are or should be within FPL's possession, such as Verizon's Pole Attachment Complaint and supporting Affidavits and Exhibits. Verizon does not maintain records in a manner that allows it to isolate the increased transfer costs that it has incurred because of its location as the lowest attacher on FPL's poles, and so is not aware of additional documents that are responsive to this Request.

**Request No. 10:**

Provide copies of all documents relating to or evidencing Verizon's position that the pole owner does not incur more expense to relocate the pole plus its facilities compared to an attacher who avoided pole ownership.

**Objections:**

Verizon objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon further objects to this Request because it may not accurately reflect any argument or statement in Verizon's Complaint or supporting Affidavits, seeks documents that are not relevant to the material facts in dispute in this proceeding, and/or seeks documents that are or should be within FPL's possession.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that it has not taken a position on whether or not "the pole owner does not incur more expense to relocate the pole plus its facilities compared to an attacher who avoided pole

ownership,” which is an issue that is not relevant to this proceeding. Verizon further states that it is not aware of documents that are responsive to this Request.

**Request No. 11:**

Provide copies of all documents relating to Verizon’s allegation that it would have incurred less costs if it attached to a location on the pole other than the lowest four feet.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 9, 12, 13, and 19 and further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon directs FPL to documents that are or should be within FPL’s possession, such as Verizon’s Pole Attachment Complaint and supporting Affidavits and Exhibits. Verizon does not maintain records in a manner that allows it to isolate the increased costs that it has incurred because of its location as the lowest attacher on FPL’s poles, but will produce documents that it has been able to locate as examples of the types of aerial damage that Verizon has suffered in recent years because of its position as the lowest attacher on a utility pole.

**Request No. 12:**

Provide copies of all calculations performed by Verizon, along with all supporting documentation, evidencing the difference in costs incurred by an attacher on the lowest part of the pole compared to other attachers.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 9, 11, 13, and 19 and further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon is not aware of documents that are responsive to this Request.

**Request No. 13:**

Provide copies of all documents establishing Verizon's costs to transfer facilities from one pole to another.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request No. 9 and further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon will produce documents in response to this Request.

**Request No. 14:**

Provide copies of any documents that reflect, refer to or relate to Verizon's assertion that FPL's indemnification provision typically found in its license agreement for other attachers that imposes liability on the licensee for FPL's wrongful conduct is unenforceable.

**Objections:**

Verizon objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon further objects to this Request because it may not accurately reflect any argument or statement in Verizon's Complaint or supporting Affidavits and/or seeks documents that are or should be within FPL's possession or is available from public sources. Verizon also objects to this Request because it seeks discovery of legal authority that is available to FPL from public sources and because it calls for Verizon's knowledge of the "indemnification provision typically found in [FPL's] license agreement for other attachers." Verizon asked FPL to produce its license agreements with other attachers and FPL refused.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that it has not made any representation about what indemnification provision is "typically found" in FPL's license agreements because FPL refused to provide Verizon copies of its license agreements. Verizon directs FPL to documents that are publicly available, such as Verizon's Pole Attachment Complaint and supporting Affidavits and Exhibits and caselaw from the relevant jurisdictions.



**Request No. 15:**

Provide copies of documents supporting Verizon's statement that FPL "always" extends its rights-of-way to attachers.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 16 and 17. Verizon further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon also objects to this Request because it may not accurately reflect any argument or statement in Verizon's Complaint or supporting Affidavits and/or seeks documents that are or should be within FPL's possession or is available from public sources.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that it has not made the representation that "that FPL 'always' extends its rights-of-way to attachers," but instead stated that the right-of-way that authorizes FPL's use of a utility pole "nearly always" authorizes other attachers to use the same pole. Verizon directs FPL to documents that are publicly available, such as rights-of-way on record in the relevant jurisdictions, and to documents that are or should be within FPL's possession, such as Verizon's Pole Attachment Complaint and supporting Affidavits and Exhibits and the rights-of-way that authorize FPL's use of utility poles.

**Request No. 16:**

Provide copies of documents concerning and relating to Verizon's process and costs associated with obtaining rights-of-way.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request No. 15 and 17. Verizon further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon also objects to this Request because it seeks documents that are or should be in FPL's possession or is available from public sources.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon will produce documents sufficient to show Verizon's process for obtaining rights-of-way. Verizon also directs FPL to documents that are or should be within FPL's possession, such as Verizon's Pole Attachment Complaint and supporting Affidavits and Exhibits. Verizon does not maintain records in a manner that allows it to isolate the costs that it has incurred in obtaining rights-of-way in its overlapping service area with FPL.

**Request No. 17:**

Provide copies of documents concerning, relating or evidencing to the rights-of-way, easements and franchise agreements that Verizon has obtained underlying all attachments on FPL's poles.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 15 and 16 and further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon also objects to this Request because it



seeks documents that are not relevant to the material facts in dispute in this proceeding and/or seeks documents that are or should be within FPL's possession or is available from public sources.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon directs FPL to documents that are publicly available, such municipal right-of-way permits and easements on record in the relevant jurisdictions, and to documents that are or should be within FPL's possession, such as Verizon's Pole Attachment Complaint and supporting Affidavits and Exhibits and the municipal right-of-way permits and easements that authorize FPL's use of its utility poles.

**Request No. 18:**

Provide copies of Verizon's construction standards and associated procedures/processes/costs that are associated with any FPL owned pole with Verizon attached and any Verizon owned pole with FPL attached. This request includes but is not limited to documents that identify such components as (but is not limited to) pole size, wind-load calculations, coordinating with pole owner or attacher, and pole installation inspections.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Requests No. 3, 4, 5, and 6 and further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon also objects to this Request because it seeks documents that are not relevant to the material facts in dispute in this proceeding and/or

seeks documents that are or should be within FPL's possession or is available from public sources.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon will produce documents that are sufficient to show Verizon's engineering process and engineering standards for its attachments to FPL's poles. Verizon also directs FPL to documents that are publicly available, such as the NESC and the clearance requirements set forth by the relevant jurisdictions, and to documents that are or should be within FPL's possession, such as Verizon's Pole Attachment Complaint and supporting Affidavits and Exhibits, Verizon's correspondence with FPL regarding the addition and removal of facilities, including P-58 forms, and records that Verizon has submitted to NJUNS.

**Request No. 19:**

In regard to paragraph 54 of Verizon's Complaint, for all FPL/Verizon joint use poles, provide copies of all documentation reflecting, referring to or evidencing Verizon's assertion that Verizon's facilities are harmed more often than others by those working above its facilities.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request No. 11 and 12 and further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon also objects to this Request because it seeks documents that are not relevant to the material facts in dispute in this proceeding.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon directs FPL to documents that are or should be within FPL's possession, such as Verizon's Pole Attachment Complaint and supporting Affidavits and Exhibits. Verizon does not maintain records in a manner that allows it to isolate the increased costs that it has incurred because of its location as the lowest attacher on FPL's poles, but will produce documents that it has been able to locate as examples of the types of aerial damage that Verizon has suffered in recent years because of its position as the lowest attacher on a utility pole.

**Request No. 20:**

Provide copies of all documents and sources used, prepared or presented in Verizon's analysis of the 2011 pole attachment survey in Verizon's shared territory with FPL, including but not limited to the calculation of the number of attaching entities on FPL poles with and without Verizon attached and the average height of FPL poles.

**Objections:**

Verizon objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon further objects to this Request because it seeks documents that are not relevant to the material facts in dispute in this proceeding and/or seeks documents that are or should be within FPL's possession.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon will produce documents in response to this Request. Verizon also directs FPL to documents that are or should be within FPL's possession, such as Verizon's Pole Attachment

Complaint and supporting Affidavits and Exhibits and the 2011 pole attachment survey results that FPL provided to Verizon.

**Request No. 21:**

Provide copies of all documents and sources that were relied upon and used to support the calculation of Verizon's use of 1.25 feet per pole on average in FPL's territory, which request also includes, but is not limited to, the documents that show the actual calculation.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request No. 22. Verizon further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon also objects to this Request because it may not accurately reflect any argument or statement in Verizon's Complaint or supporting Affidavits.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that it has not made the representation that recent audits show that Verizon's facilities occupy, on average, 1.25 feet of space per pole in its overlapping service area with FPL, but has stated that recent audits of Verizon's facilities in other service areas confirm that Verizon's facilities occupy on average not more than 1.25 feet of space on a joint use pole. Verizon further states that FPL did not design its 2011 pole attachment survey to capture the information required to determine the amount of space that Verizon's facilities occupy, on average, in FPL's territory, and so is not aware of documents that are responsive to this Request.

**Request No. 22:**

Provide copies of all documents reflecting, relating to or evidencing the amount of space actually used or occupied by Verizon on each FPL pole to which Verizon is attached.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request No. 21. Verizon further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon also objects to this Request because it seeks documents that are or should be within FPL's possession.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that FPL did not design its 2011 pole attachment survey to capture the information required to determine the amount of space that Verizon's facilities occupy, on average, on each FPL pole to which Verizon is attached, and so is not aware of documents that are responsive to this Request.

**Request No. 23:**

Provide copies of all documents reflecting, relating to or evidencing the number of Verizon's attachments on each FPL pole to which Verizon is attached.

**Objections:**

Verizon objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon further objects to this Request because it seeks documents that are or should be within FPL's possession.



**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon states that FPL did not design its 2011 pole attachment survey to capture the information required to determine the number of Verizon's attachments on each FPL pole to which Verizon is attached, and so is not aware of documents that are responsive to this Request.

**Request No. 24:**

Provide copies of all documents and sources that were relied upon or used to determine the number of Verizon competitors on FPL poles including but not limited to the documents that show the actual calculation.

**Objections:**

Verizon objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon further objects to this Request because it may not accurately reflect any argument or statement in Verizon's Complaint or supporting Affidavits.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon directs FPL to documents that are publicly available, such as the Commission's rules, including 47 C.F.R. § 1.1417(c), and population data that is available from the Bureau of Census, United States Department of Commerce.

**Request No. 25:**

Provide copies of all documents and sources that were relied upon and used by Verizon, to calculate FPL's average pole height for poles where there are no attachers, other than FPL, which request also includes, but is not limited to, the documents that show the actual calculation.

**Objections:**

Verizon objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon further objects to this Request because it seeks documents that are or should be within FPL's possession.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon is not aware of documents that are responsive to this Request.

**Request No. 26:**

Provide copies of all documents over the last five years that show the cost to Verizon's competitors to change a Verizon pole out to a taller stronger Verizon pole that would accommodate Verizon's competitor on the replacement pole.

**Objections:**

Verizon objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon further objects to this Request because it seeks documents that are not relevant to the material facts in dispute in this proceeding.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon is not aware of documents that are responsive to this Request.

**Request No. 27:**

Provide copies of all documents showing Verizon is currently attached to any / all FPL poles set in 1975 or earlier.

**Objections:**

Verizon objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon further objects to this Request because it seeks documents that are or should be within FPL's possession.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon is not aware of documents that are responsive to this Request.

**Request No. 28:**

Provide copies of all documents that show it takes Verizon no less than 27 days to have an attachment approved by FPL.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 7 and 8. Verizon further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents. Verizon also objects to this Request because it may not accurately reflect any argument or statement in Verizon's Complaint or supporting Affidavits and/or seeks documents that are or should be within FPL's possession.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon is not aware of documents that are responsive to this Request.



**Request No. 29:**

Copies of all communications between Calnon and others that relate to the testimony contained in the affidavit filed with the FCC Complaint.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 30, 31, and 32. Verizon further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon is not aware of non-privileged documents that are responsive to this Request.

**Request No. 30:**

Provide copies of all communications by, from, between or among Mark Calnon and others that relate to the testimony contained in his affidavits filed with the FCC.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 29, 31, and 32. Verizon further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon is not aware of non-privileged documents that are responsive to this Request.

**Request No. 31:**

Provide copies of all documents and sources that Mark Calnon reviewed or relied upon in connection with rendering his opinions and supporting his affidavits.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 29, 30, and 32. Verizon further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon will produce any non-privileged documents that Dr. Mark S. Calnon reviewed or relied upon to support his March 13, 2015 Affidavit. Verizon also directs FPL to documents that are publicly available, such as the Commission's *Pole Attachment Order*, the Enforcement Bureau's February 12, 2015 Memorandum Opinion and Order, FPL's prior filings at the FCC, and any other sources cited in Dr. Calnon's March 13, 2015 Affidavit, and to documents that are or should be within FPL's possession, such as Verizon's Pole Attachment Complaint and supporting Affidavits and Exhibits, and the parties' pleadings, Affidavits, and Exhibits in Docket No. 14-216, File No. EB-14-MD-003.

**Request No. 32:**

Provide copies of all documents and sources that support Mark Calnon's calculations, including any notes and worksheets.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 29, 30, and 31. Verizon further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon will produce any non-privileged documents that Dr. Mark S. Calnon reviewed or relied upon to support his March 13, 2015 Affidavit. Verizon also directs FPL to documents that are publicly available, such as the Commission's *Pole Attachment Order*, the Enforcement Bureau's February 12, 2015 Memorandum Opinion and Order, FPL's prior filings at the FCC, and any other sources cited in Dr. Calnon's March 13, 2015 Affidavit, and to documents that are or should be within FPL's possession, such as Verizon's Pole Attachment Complaint and supporting Affidavits and Exhibits, and the parties' pleadings, Affidavits, and Exhibits in Docket No. 14-216, File No. EB-14-MD-003.

**Request No. 33:**

Provide copies of all documents and sources that support the statements, opinions and calculations asserted in the affidavit of Timothy Tardiff.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request No. 34. Verizon further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon will produce documents that Dr. Timothy J. Tardiff reviewed or relied upon to support his March 13, 2015 Affidavit. Verizon also directs FPL to documents that are publicly available, such as the Commission's *Pole Attachment Order*, the Enforcement Bureau's February 12, 2015 Memorandum Opinion and Order, FPL's prior filings at the FCC, and any other sources cited in Dr. Tardiff's March 13, 2015 Affidavit, and to documents that are or should be within FPL's possession, such as Verizon's Pole Attachment Complaint and supporting Affidavits and Exhibits, and the parties' pleadings, Affidavits, and Exhibits in Docket No. 14-216, File No. EB-14-MD-003.

**Request No. 34:**

Provide copies of all communications by, from, between or among Timothy Tardiff and others that relate to his affidavit filed in this matter.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request No. 33. Verizon further objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon will produce emails in response to this Request, but will not produce the attachment to an email where its identity is apparent and the document is or should be in FPL's possession.

**Request No. 35:**

Provide copies of all documents and sources that support the statements, opinions and calculations asserted in the affidavit of Steven Lindsay.

**Objections:**

Verizon objects to this Request because it is vague, ambiguous, overbroad, unduly burdensome, and/or seeks confidential and/or privileged documents.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon directs FPL to documents that are or should be within FPL's possession, such as Verizon's Pole Attachment Complaint and supporting Affidavits and Exhibits, the parties' pleadings, Affidavits, and Exhibits in Docket No. 14-216, File No. EB-14-MD-003, and Verizon's payments for 2011-2013 pole rent. Verizon is not aware of additional non-privileged documents that Steven R. Lindsay reviewed or relied upon to support his March 12, 2015 Affidavit.

**Request No. 36:**

Provide copies of all requests by Verizon to FPL to set new poles under the JUA.

**Objections:**

Verizon objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon further objects to this Request because it seeks documents that are not relevant to the material facts in dispute in this proceeding and/or seeks documents that are or should be within FPL's possession.

**Response:**

Subject to and without waiver of these objections and the foregoing general objections, Verizon is not aware of documents that are responsive to this Request.

**Request No. 37:**

Provide copies of any memoranda, reports, notes, business plans, or other documents that relate to whether Verizon choses or chose to set new poles or just attach to FPL poles.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 38, 39, 40, 41, 42, and 43 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon further objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 38:**

Provide copies of any and all Verizon strategic planning documents relating to the planning, budgeting, construction, and utilization of poles and pole networks, and pole network costs during the time period of the joint use relationship between the parties.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 37, 39, 40, 41, 42, and 43 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon further objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.



**Request No. 39:**

Provide copies of all Verizon capital planning and budgeting documentation, including information relating to the use of corporate resources for poles and pole network construction, and period costs for access to poles and pole networks during the time period of the joint use relationship between the parties.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 37, 38, 40, 41, 42, and 43 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 40:**

Provide copies of all Verizon budgeting, cost analyses, and opportunity cost analyses of poles and pole networks owned and accessed through joint use agreements or third party attachments during the time period of the joint use relationship between the parties.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 37, 38, 39, 41, 42, and 43 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.



**Request No. 41:**

Provide copies of documents concerning or relating to Verizon's analyses of budgeting and the use of corporate resources concerning poles and pole networks owned and accessed through joint use agreements or third party attachments, alternatives for those corporate resources, opportunity costs associated with those resources during the time period of the joint use relationship between the parties.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 37, 38, 39, 40, 42, and 43 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 42:**

Provide copies of documents concerning or relating to Verizon's analyses of the cost and use of poles and pole networks owned and accessed through joint use agreements or third party attachments during the time period of the joint use relationship between the parties.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 37, 38, 39, 40, 41, and 43 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 43:**

Provide copies of documents concerning or relating to Verizon's cost of service analyses that reflect the cost of distribution networks including poles and pole networks, whether owned, subject to joint use agreements, and leased attachments during the time period of the joint use relationship between the parties.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request Nos. 37, 38, 39, 40, 41, and 42 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 44:**

Provide copies of all documents of Verizon that relate to or concern Verizon's average incremental borrowing rate over the past five years.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request No. 45 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

**Request No. 45:**

Provide copies of all documents of Verizon that relate to or concern its capital annual budgeting structure including information relating to cash management and borrowing needs.

**Objections:**

Verizon objects to this Request because it is unreasonably cumulative and duplicative in that the documents appear to have also been requested in Request No. 44 and further objects to this Request because it is vague, ambiguous, overbroad, and unduly burdensome. Verizon also objects to this Request because it seeks confidential and privileged documents that are not relevant to the material facts in dispute in this proceeding.

Respectfully submitted,

By:



Christopher S. Huther  
Claire J. Evans  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
(202) 719-7000  
chuther@wileyrein.com  
cevans@wileyrein.com

William H. Johnson  
Katharine R. Saunders  
Roy E. Litland  
VERIZON  
1320 N. Courthouse Rd.  
9<sup>th</sup> Floor  
Arlington, VA 22201  
(703) 351-3060  
will.h.johnson@verizon.com  
katharine.saunders@verizon.com  
roy.litland@verizon.com

*Attorneys for Verizon Florida LLC*

Dated: May 7, 2015

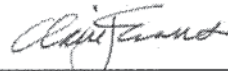
### CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2015, I caused a copy of the foregoing Responses to FPL's Requests for Production of Documents to be served on the following via email:

Charles A. Zdebski  
Gerit F. Hull  
Jeffrey P. Brundage  
Eckert Seamans Cherin and Mellott, LLC  
1717 Pennsylvania Avenue, NW, Suite 1200  
Washington, DC 20006  
(202) 659-6600  
czdebski@eckertseamans.com  
ghull@eckertseamans.com  
jbrundage@eckertseamans.com

Maria Jose Moncada  
Florida Power and Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408  
(561) 304-5795  
maria.moncada@fpl.com

Alvin B. Davis  
Squire Patton Boggs  
200 South Biscayne Boulevard, Suite 4700  
Miami, FL 33131  
(305) 577-2835  
alvin.davis@squirepb.com



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Claire J. Evans